TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 283

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, PETITIONER,

vs.

SOUTHERN PACIFIC COMPANY AND SOUTHERN PACIFIC RAILROAD COMPANY

No. 284

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, PETITIONER,

vs.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY

No. 285

...AD COMMISSION OF THE STATE OF CALIFORNIA, PETITIONER,

vs.

LOS ANGELES & SALT LAKE RAILROAD COMPANY

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

PETITIONS FOR CERTIORARI FILED APRIL 11, 1923

WRITS AND RETURNS FILED NOVEMBER 3, 1923

(29,534, 29,535, 29,536)

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In the Supreme Court
OF THE
United States

October Term, 1922

No.

Railroad Commission of the State of California,
Petitioner,

vs.

Southern Pacific Company (a corporation), Southern Pacific Railroad Company (a corporation),
Respondents.

Railroad Commission of the State of California,
Petitioner,

vs.

The Atchison, Topeka & Santa Fe Railway Company (a corporation),
Respondent.

Railroad Commission of the State of California,
Petitioner,

vs.

Los Angeles and Salt Lake Railroad Company (a corporation),
Respondent.

TRANSCRIPT OF RECORD

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

In the Supreme Court of the State of California.

Southern Pacific Company, Petitioner, vs. Railroad Commission, Respondent.	S. F. No. 10,111
Atchinson, Topeka & Santa Fe Railway Company, Petitioner, vs. Railroad Commission, Respondent.	L. A. No. 7166
Los Angeles & Salt Lake Railroad Company, Petitioner, vs. Railroad Commission, Respondent.	L. A. No. 7165

CERTIFICATION.

I, B. Grant Taylor, Clerk of the above-entitled court, do hereby certify that the attached documents, to-wit:

1. Complaint of the Municipal League, Case No. 970 against the Southern Pacific Co.; the Atchison, Topeka & Santa Fe Railway Co.; and the Los Angeles & Salt Lake Railroad Co., filed with the Railroad Commission July 6th, 1916 (omitting exhibits).

2. Answer of the Southern Pacific Company to complaint of Municipal League, Case No. 970, filed with the Railroad Commission of California, August 7th, 1916.

3. Answer of the Atchison, Topeka & Santa Fe Railway Company to complaint of the Municipal League, Case No. 970, filed with the Railroad Commission July 29, 1916.

4. Answer of the Los Angeles & Salt Lake Railroad Company to complaint of the Municipal League, Case No. 970, filed with the Railroad Commission July 28th, 1916.

5. Application of the Southern Pacific Co. and the Los Angeles & Salt Lake Railroad Company, No. 3346, filed with the Railroad Commission, Nov. 22, 1917, (omitting exhibits).

6. Decision of the Railroad Commission, No. 8901, rendered April 26th, 1921.

7. Excerpt from applications for rehearing filed with the Railroad Commission by the Southern Pacific Company; Atchison, Topeka & Santa Fe Railway Company and the Los Angeles & Salt Lake Railroad Company on May 10 and 12, 1921.

8. Order of the Railroad Commission granting rehearing, dated October 7th, 1921.

9. Decision of the Railroad Commission of California, No. 9838, rendered December 6th, 1921.

10. Excerpt from applications for rehearing filed with the Railroad Commission by the Southern Pacific Co., Atchison, Topeka & Santa Fe Railway Company and the Los Angeles & Salt Lake Railroad Co., on Dec. 17 and 19, 1921.

11. Order of the Railroad Commission denying applications for rehearing, dated December 28th, 1921.

12. Petition of Southern Pacific Company for a Writ of Review filed in the Supreme Court of California, Jan. 4, 1922 (omitting exhibits).

13. Petition of the Atchison, Topeka & Santa Fe Railway Company for a Writ of Review, filed in the Supreme Court of California, Jan. 5, 1922 (omitting exhibits).

14. Petition of the Los Angeles & Salt Lake Railroad Company, for a Writ of Review filed in the Supreme Court of California, Jan. 5, 1922 (omitting exhibits).

15. Writ of Review issued out of the Supreme Court of California upon petition of the Southern Pacific Company, S. F. 10,111, dated January 7th, 1922.

16. Writ of Review issued out of the Supreme Court of California upon petition of Atchison, Topeka & Santa Fe Railway Company, L. A. No. 7166, dated January 16th, 1922.

17. Writ of Review issued out of the Supreme Court of California upon petition of Los Angeles & Salt Lake Railroad Company, L. A. No. 7165, dated January 17th, 1922.

18. Return of Railroad Commission of California to Writ of Review issued upon petition of Southern Pacific Company, S. F. 10,111, filed with the Supreme Court of California, February 6, 1922 (omitting pleadings, transcripts and exhibits).

19. Return of the Railroad Commission of California to Writ of Review issued upon petition of the Atchison,

Topeka & Santa Fe Railway Company, L. A. No. 7166, filed with the Supreme Court of California, February 6, 1922.

20. Return of Railroad Commission of California to Writ of Review issued upon petition of Los Angeles & Salt Lake Railroad Company, L. A. No. 7165, filed with the Supreme Court of California, February 6th, 1922.

21. Minute Order of Supreme Court of California dated February 6, 1922, showing consolidation for hearing and decision of Southern Pacific Company vs. Railroad Commission; Atchison, Topeka & Santa Fe Railway Company vs. Railroad Commission, and Los Angeles & Salt Lake Railroad Company vs. Railroad Commission.

22. Decision of Supreme Court of California rendered December 19, 1922, annulling decision of the Railroad Commission.

23. Orders of the Supreme Court of California filed January 18, 1923, denying petition of Railroad Commission for rehearing.

24. Remittitur issued out of Supreme Court of California in case of Southern Pacific Company vs. Railroad Commission, S. F. 10,111, dated January 22, 1923.

25. Remittitur issued out of Supreme Court of California in case of Atchison, Topeka & Santa Fe Railway Company vs. Railroad Commission, L. A. No. 7166, dated January 22, 1923.

26. Remittitur issued out of Supreme Court of California in case of Los Angeles & Salt Lake Railroad

Company vs. Railroad Commission, L. A. No. 7165, dated January 22, 1923.

27. Stipulation defining record,

are true and correct copies of the documents on file in my office in the record of Southern Pacific Company vs. Railroad Commission, S. F. No. 10,111; Atchison, Topeka & Santa Fe Railway Company vs. Railroad Commission, L. A. No. 7166; and Los Angeles & Salt Lake Railroad Company vs. Railroad Commission, L. A. No. 7165.

March ....., 1923.

(Seal) B. GRANT TAYLOR,
Clerk of the Supreme Court of
the State of California.

(Endorsed): In the Supreme Court of the State of California. S. F. No. 10,111. Southern Pacific Company, Petitioner, vs. Railroad Commission Respondent; L. A. No. 7166, Atchison, Topeka & Santa Fe Railway Company, Petitioner, vs. Railroad Commission, Respondent; L. A. No. 7165, Los Angeles & Salt Lake Railroad Company, Petitioner, vs. Railroad Commission, Respondent. Certification. Original.

Before the Railroad Commission of the State of California.

Case No. 970

The Municipal League, a voluntary organization of the citizens of the City of Los Angeles, State of California,

Complainant,

vs.

The Southern Pacific Company, Atchison, Topeka and Santa Fe Railway Company, and San Pedro, Los Angeles and Salt Lake Railroad Company,

Defendants.

COMPLAINT.

The complainant respectfully shows:

I.

That the complainant, the Municipal League, is a voluntary organization having a membership of several hundred citizens of the City of Los Angeles, who have organized themselves for the purpose of considering matters of public importance to the City of Los Angeles and its inhabitants and of securing necessary and appropriate action upon such matters, and its post office address is Los Angeles, California.

II.

That the Southern Pacific Company, the Atchison, Topeka and Santa Fe Railway Company, and the San Pedro, Los Angeles and Salt Lake Railroad Company, the above named defendants, are corporations and each is engaged in operating a line of transcontinental railway having its terminus in the City of Los Angeles, and the post office address of each of said defendants is Los Angeles, California.

III.

That the citizens and residents of the City of Los Angeles and of territory surrounding it and tributary to it and the passengers upon railroad cars traversing the city, are profoundly affected by the existence within the limits of the city of many crossings at grade of the streets of said city by lines of steam and electric railways and the use of many of the streets of said city by such lines of railway as will more fully appear hereafter. That in order to investigate and arrive at an intelligent understanding of the matters set forth in this complaint the complainant, through a committee composed of engineers and experts of recognized ability, has prosecuted a careful investigation of crossings at grade and the use of the streets of the City of Los Angeles by the railroad lines of the defendants above named, and that the results of the investigation so conducted by the complainant, stated in general terms, are as follows:

The City of Los Angeles is a community having within its boundaries a population of about 600,000 and

it is surrounded by numerous smaller towns and cities having populations of from a few hundred to forty or fifty thousand each, and also annually entertains many hundreds of thousands of visitors and tourists.

That the City of Los Angeles is crossed from north to south by the trunk lines of three transcontinental railroads—the defendants above named; that these three defendants maintain within the City of Los Angeles three separate, main passenger stations and three separate principal freight stations and other subsidiary passenger and freight stations, and separate yards consisting of great area of tracks where freight and passenger trains are made up.

That the Pacific Electric Railway Company maintains at two different points within the business district of the City of Los Angeles separate passenger stations for the use and service of its interurban trains and these interurban trains, to the number of more than two thousand each day, enter and leave the City of Los Angeles over various routes, crossing certain of the steam railroad lines of the above named defendants.

That the entrance and crossing of the city by the lines and tracks operated by defendants have resulted in the crossing of the streets of the City of Los Angeles by their lines at grade in a very great number of different places, and that several streets of said city, and notably Alameda Street, a main artery, and Alhambra Avenue, an important street, are occupied longitudinally by the lines of one of the defendants.

That many of the grade crossings herein referred to are upon streets that are main arteries of traffic to and from the business center of the City of Los Angeles, and its suburbs and along which large numbers of street cars, thousands of vehicles, including heavy loaded trucks, and great numbers of pedestrians pass each twenty-four hours.

That the crossing of the streets of the city at grade by the tracks of the above named defendants has been in the past productive of many accidents and collisions which have been destructive of the lives and property of the people of the City of Los Angeles and visitors to said city, and which produce constant danger of injury and destruction to the cars of the railroad lines and to the passengers thereon.

That an important and populous part of the eastern area of said city, known as Boyle Heights, and East Los Angeles, are separated from the remainder of the city by the main tracks of the above named defendants and the intercommunication between this area to the business portion of the city is made difficult and dangerous by reason of the crossings at grade of the main arteries of the city by the main lines of the steam railroad companies above named to the great danger and detriment of the people intercommunicating between these sections of the city and the business center of the city, and to the injury and damage to a greater or less extent of all the property situated in those portions of the city so separated from its business center or traversed by the tracks complained of.

That a number of important and populous towns and cities, including the City of Pasadena, with more than forty thousand inhabitants, and whose inhabitants, and whose tourists and visitors, largely find their center of trade in the City of Los Angeles, are so situated that all persons traveling from them to the business center of the City of Los Angeles are compelled to cross one or more of the main tracks of the defendants at grade, to the great danger of personal injury.

That the three steam railroad companies named as defendants maintain three separate main passenger stations and subordinate stations in said city which are not intercommunicating nor situated on main thoroughfares, but are maintained as separate and distinct centers, each with its complement equipment of main tracks, side tracks, spur tracks, etc.

That the said three companies maintain three centers of freight collection and delivery in said city and also several subordinate centers with their equipments of main tracks, side tracks, spur tracks, etc.; that the present location of the tracks and stations of the defendants makes it necessary that they shall each maintain their separate systems of industrial tracks for the collection and delivery of freight by spur tracks, etc., thus causing excessive and unnecessary use of the streets of the city by the engines and cars of the defendants, and resulting in great inconvenience to the people of the city and to the visitors of the city in the use of its streets and in grave risk to the lives and property of such citizens and visitors, and in large damage to the property located on and near said tracks and

in danger to the railroad cars and the passengers thereon on account of collisions.

IV.

Your complainant would further represent that the area of the City of Los Angeles is crossed from the north to the south, near its business center, by the Los Angeles River, the bed of which is of an average width of three hundred feet. That in order to afford communication between the portions of the city on each side of the river, it is necessary to maintain across the same bridges and viaducts; that several of these structures, on account of being elevated to cross railway tracks extending along each side of said river, are of necessity in such form as to make their use difficult and dangerous on account of the excessive grades of the approaches to them, and that a number of them are in such condition of disrepair that the city will shortly find it necessary to replace them with more adequate structures, and that in order that such replacement and rebuilding shall be done properly there should be a readjustment of the tracks of some of the defendants running along and near the said Los Angeles River, and which are crossed by said bridges and viaducts, or the approaches thereto.

That in order to relieve the people of the city and railroad cars and passengers from the danger, damage and inconvenience of the existence of the numerous grade crossings and other conditions complained of, it will be necessary to concentrate the various tracks of the defendants above named and also to provide for the

use by the lines of said defendants entering and leaving the city with passengers and freight of a central or union passenger station, and of one or more central freight stations or depots.

That the injury and menace to life and property is constantly increasing with the growth of the city and the business of said defendants; and that thereby the barrier between the center of the city and the districts to the north and east is constantly becoming more intolerable.

That the City Council of the City of Los Angeles heretofore appointed a committee known as the "Viaduct Committee" to investigate and report to the said City Council upon the matter of grade crossings, and also appointed a Committee of Engineers, consisting of the city engineer of the City of Los Angeles, the engineer of the Board of Public Works of the City of Los Angeles, and in addition thereto an engineer of recognized ability who is a citizen of the City of Los Angeles, for the purpose of investigating and reporting upon the matter of grade crossings in said city, a copy of the report of the said Viaduct Committee and of said Committee of Engineers to the said City Council was transmitted by said City Council to your Honorable Body by letter under date of May 16, 1916, and a copy of said Committee of Engineer's report is hereto attached as exhibit A of this complaint.

That the Municipal League of Los Angeles, the complainant herein, received from its "Committee for the Improvement of Grade Crossings" a report under date

of April 7, 1916, a copy of which is hereto attached as exhibit B of this complaint.

Now, therefore, complainant prays that you take official action;

To investigate the entire situation.

To hear all parties and examine all designs.

To order relief by reclaiming Alameda Street and other streets, by the improvement and abolition of grade crossings, by the installing of a union terminal and by reorganization of the trackage situation so that, as far as possible, the operation of the lines of the defendants along or across the streets of the City of Los Angeles may be eliminated, locating said terminal station in as accessible a position as possible to the main lines of street and interurban electric railroads;

And such further, other or additional action as may in your judgment be necessary or expedient to improve the present condition herein complained of.

The complainant, by resolution of its governing body, has caused this complaint to be signed with its name by its President, and attested by its Secretary.

Dated this 3rd day of July, 1916.

THE MUNICIPAL LEAGUE OF THE CITY OF LOS ANGELES,

By Charles H. Langenniux, President.

Attest:

Seward C. Simons,
Secretary.

T. E. Gibbon, Los Angeles, California, attorney for complainant.

State of California,
County of Los Angeles.—ss.

The undersigned, being first duly sworn, deposes and says: That they are the president and secretary of the Municipal League, the complainant in the action entitled as above; that they have read the foregoing complaint and know the contents thereof; that the same is true of their own knowledge, except as to the matters which are therein stated on information or belief, and that as to those matters they believe it to be true.

Witness:

Chas. H. Langunniux,
Seward C. Simons.

Subscribed and sworn to before me this 3rd day of July, 1916.

(Seal) Catharine Cattanach,
Notary Public in and for the County of Los Angeles, State of California.

My commission expires Aug. 31, 1918.

(Endorsed): Filed, Railroad Commission, State of California, July 6, 1916, Charles R. Detrick, Sec. Case No. 970, Ex. A-B.

Before the Railroad Commission of the State of California.

Case No. 970

The Municipal League, a voluntary organization of the citizens of the City of Los Angeles, State of California,
Complainant.

vs.

The Southern Pacific Company, Atchison, Topeka & Santa Fe Railway Company, and San Pedro, Los Angeles and Salt Lake Railroad Company,
Defendants.

ANSWER OF SOUTHERN PACIFIC COMPANY.

Defendant, Southern Pacific Company, for answer herein:

Upon the ground that it has not sufficient knowledge, information, or belief upon the subject to enable it to answer, defendant denies the allegations contained in paragraph I of complainant's complaint, and prays that complainant may be put to its proof thereof.

Upon the same ground, defendant denies the allegations contained in paragraph III of complainant's complaint, with the exception that defendants do, as alleged by complainant, maintain within the City of Los Angeles separate main passenger stations and separate

principal freight stations, and separate yards where passenger and freight trains are made up; and that the Pacific Electric Railway Company operates interurban trains which cross certain of the steam railroad lines of defendants in said city at grade, the number of which is unknown to defendant; and that this defendant operates on certain streets in said city longitudinally; that some of said grade crossings are upon streets which are traversed by vehicles, loaded trucks and pedestrians, the exact amount of such traffic being unknown to defendant; and that the Atchison, Topeka & Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company and Southern Pacific Company, maintain separate passenger and freight stations, each with its complete equipment of main tracks, side tracks and spur tracks, etc.; but defendant denies that the crossings of the streets of said city at grade by defendant's tracks have been in the past productive of many accidents or collisions, which have been destructive of the lives or property of the people of Los Angeles, or visitors to said city; or that the crossing of said streets produce constant danger of injury or destruction to the cars of the railroad lines or to the passengers thereon; or that the inter-communication between the area known as Boyle Heights and East Los Angeles and the business portion of the city is at all made difficult or dangerous by reason of any of said crossings at grade, or to the great danger or any detriment of the people inter-communicating between said sections, or to any injury or damage to any property situated in said city, or otherwise or at all; or that the persons traveling from said sections to the business portion of Los Angeles are at

all compelled to cross one or more tracks of defendant at grade, to their great or any danger of personal injury; or that the present location of any of said tracks or stations of defendants, to which reference is made by complainant, makes it necessary that they shall maintain their separate systems and industrial tracks for the collection or delivery of freight by spur tracks; or that thereby any unnecessary or excessive use of the streets of said city is caused by the engines or cars of defendant; or that great or any inconvenience to the people of the city, or to visitors of the city, in the use of said streets is caused thereby; or that there is grave or any risk to the lives or property of any such citizens or visitors, or a large or any damage to the property located on or near said tracks; or that damage to the railroad cars or passengers thereon is caused on account of collisions, or otherwise, or at all.

Defendant denies that it maintains any viaducts or bridges across the Los Angeles River, or at any other point, or at all, in such form as to make their use difficult or dangerous, on account of the excessive grades of the approaches to them, or otherwise or at all; or that a number or any of them are in such condition of repair that the city will shortly find it necessary to replace them with more adequate structures; or that any such replacement or rebuilding would necessitate a readjustment of the tracks of this defendant running along or near the said Los Angeles River which are crossed by said bridges or viaducts, or the approaches thereto, or otherwise or at all.

Defendant denies that in order to relieve the people of the City of Los Angeles, or railroad cars or passengers from any danger, damage or inconvenience by the existence of any grade crossing or crossings, or any other conditions complained of, it will be at all necessary to concentrate any tracks of defendant, or to provide for the use by the lines of any of said defendants of a central or union passenger station, or of one or more central freight stations or depots, or otherwise or at all.

Defendant denies that there is any injury or menace to life or property by reason of anything alleged in complainant's complaint, or otherwise or at all; or that by reason of anything alleged in complainant's complaint, or otherwise or at all, there is any barrier between the center of the said city and the districts to the north and east; or that by reason of anything alleged in complainant's complaint, or otherwise or at all, there is any intolerable condition existing.

Upon the ground that it has not sufficient knowledge, information, or belief upon the subject to enable it to answer, defendant denies the allegations contained in complainant's complaint with reference to the appointment of the "Viaduct Committee", or of the "Committee for the Improvement of Grade Crossings", or that the reports of said committees, attached to complainant's complaint as exhibits A and B, were rendered by said committees, and prays that complainant may be put to its proof thereof.

For a further and separate defense, defendant alleges that the Railroad Commission of the State of Cali-

fornia has no jurisdiction of the above-entitled matter, and has no jurisdiction of the subject matter thereof; and further, that the said commission has no jurisdiction to enter any order prayed for by complainant herein.

Wherefore, defendant prays that said complaint may be dismissed.

C. W. Durbrow,
Attorney for Defendant Southern Pacific Company.

State of California,
City and County of San Francisco.—ss.

W. R. Scott, being duly sworn, deposes and says: That he is vice president and general manager of Southern Pacific Company, one of the defendants named in the above-entitled proceeding; that as such officer he is familiar with the facts therein stated and is qualified to make this affidavit for and on behalf of said corporation; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information or belief, and that as to such matters he believes it to be true.

W. R. Scott.

Subscribed and sworn to before me this 2d day of August, A. D. 1916.

(Seal) Hugh T. Sime,
Notary Public in and for the City and County of San Francisco, State of California.

(Endorsed): Case No. 970. Before the Railroad Commission of the State of California. The Municipal

League, Complainant, vs. Southern Pacific Company, et al., Defendants. Answer of Southern Pacific Company. C. W. Durbrow, Attorney for Deft. S. P. Co., 828 Flood Building, San Francisco, Cal.

Filed. Railroad Commission, State of California, Aug. 7, 1916, Charles R. Detrick, Sec. Case No. 970, Ex. —

Before the Railroad Commission, State of California.

Case No. 970

Municipal League etc.,
Complainant,

vs.

Southern Pacific Railway Co., et al.,
Defendant.

ANSWER OF A. T. & S. F. RY. CO.

Now comes the Atchison Topeka and Santa Fe Railway Company appearing for itself only, and for its separate answer and defense to the complaint hereinbefore filed in the above entitled proceeding respectfully shows:

I.

Answering the fourth paragraph of said complaint defendant shows that it has no information nor belief sufficient to enable it to answer that portion of said complaint which alleges, that a number of the bridges and viaducts in said City of Los Angeles, are in such condition of disrepair that said city will shortly find it necessary to replace them, and on that ground denies said allegation.

II.

And it denies so much of said paragraph four as alleges that in order to relieve the people of the city, railroad cars and passengers from the danger, damage and inconvenience of the existence of the numerous grade

crossings it will be necessary to concentrate the various tracks of the defendants above named, and also to provide for the use of the lines of said defendants entering and leaving the city with passengers and freight a central or union passenger station and one or more central freight stations or depots; and it denies all of said allegations.

III.

And for a further and separate answer and defense to said complaint this defendant shows that there is a defect of parties defendant; that is to say, Pacific Electric Railroad Co., the Los Angeles Railway Co., the City of Los Angeles, and County of Los Angeles, ought to be made parties defendant to said proceeding because it appears upon the face of said complaint that said Pacific Electric and Los Angeles Railway Companies are interested and will be directly affected by any change in the re-arrangement of tracks in the said City of Los Angeles; that said City of Los Angeles is interested and directly affected by any re-arrangement of said tracks especially so far as tracks on streets and across streets are concerned in said city; and that said city is interested in so far as said proceeding may involve a change in any bridges in said city, and furthermore, that said city and said County of Los Angeles ought reasonably to be required to bear a portion of the expense of making any of the changes proposed by said complaint.

IV.

And for a further answer and defense in said proceedings, said defendant shows that the honorable commission has no jurisdiction to require this defendant to

unite with other defendants in a joint passenger station or to unite with other defendants in a joint freight depot or depots, or to require a separation of grades at street crossings in said city.

Dated, July 25, 1916.

E. W. CAMP,
U. T. CLOTFELTER,
Attorneys for Defendant.

State of California,
County of Los Angeles.—ss.

W. H. Brewer, being by me first duly sworn, says that he is an officer, namely, the Assistant General Manager of the Defendant A. T. & S. F. Ry. Co. named in the foregoing Answer that he has read said Answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information or belief, and that as to those matters he believes it to be true.

W. B. Brewer.

Subscribed and sworn to before me this 25th day of July, A. D. 1916.

(Seal) Edith M. Astburg,
Notary Public in and for the County of Los Angeles, State of California.

(Endorsed): Original Case No. 970. Dept._____. Before the Railroad Commission of California. Municipal League, etc., Plaintiffs, v. S. P. Ry. Co. et al, Defendants. Answer of A. T. & S. F. Ry. Co. Received copy of the within _____ this _____ day of _____ 191____. _____. Attorney for_____
E. W. Camp, Paul Burks, Robt. Brennan, M. W. Reed,

U. T. Clotfelter. 409 Kerckhoff Building, Los Angeles, Cal., Telephone Main 2980. Attorneys for Defendant A. T. S. F. Ry. Co.

Filed Railroad Commission State of California, Jul. 29, 1916, Charles R. Detrick, Sec. Case No. 970 Ex .....

Minnesota State Library,
St. Paul, Minn.

Before the Railroad Commission of the State of California.

Case No. 970 Ex. A-B

The Municipal League, a voluntary organization of the citizens of the City of Los Angeles, State of California,

Complainant,

vs.

The Southern Pacific Company, Atchison, Topeka and Santa Fe Railway Company, and Salt Lake Railroad Company,

Defendants.

SEPARATE ANSWER

OF

SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY.

Comes now defendant, San Pedro, Los Angeles & Salt Lake Railroad Company, and without waiving, but expressly reserving, all objections and exceptions heretofore taken in this proceeding, files this its separate answer herein, as follows:

I.

By way of special and separate defenses to the said proceeding and to the complaint, defendant says:

(a) That said commission has no jurisdiction of the subject matter set forth in the complaint;

(b) That the commission has no jurisdiction or power to order the construction of viaducts or the abolition of grade crossings within the City of Los Angeles;

(c) That the said commission has no jurisdiction or power to order the removal of the freight station or business of this defendant in the City of Los Angeles from its present location to any other point;

(d) That said commission has no jurisdiction or power to order the removal of the passenger station and business of this defendant in the City of Los Angeles from its present location to any other point;

(e) That the commission has no jurisdiction or power to reorganize the trackage of this defendant;

(f) That the said commission has no jurisdiction or authority to order this defendant to join with the other defendants in the acquisition, construction or maintenance of a union passenger terminal within the City of Los Angeles;

(g) That the said commission has no jurisdiction or authority to order this defendant to join with the other defendants in the acquisition, construction or maintenance of a union freight terminal within the City of Los Angeles;

(h) That the commission has no power or authority to grant the relief or any of the relief prayed for in the third paragraph of the prayer of said complaint;

(i) That said complaint does not state facts sufficient to entitle the complainant to the relief, or any of the relief, prayed for;

(j) That the City of Los Angeles, a municipal corporation, the County of Los Angeles, and the Pacific Electric Railway Company, a corporation, are necessary parties to said proceeding and should be joined as parties defendant therein.

II.

And this defendant, without waiving any of the separate and special defenses hereinbefore set forth, and as a further and separate answer herein, says:

Referring to the allegations of paragraph III of the complaint, to the effect that complainant has prosecuted a careful investigation of crossings at grade and the use of the streets of the City of Los Angeles by the railroad lines of defendants above named, this defendant has no knowledge, information or belief sufficient to enable it to answer the same, and basing its denial on that ground denies the said allegations; and on the said ground denies that the results of such investigation, as set forth in said paragraph III, are true or correct.

III.

Referring to the allegations of paragraph IV, this defendant denies that any of the bridges or viaducts across the railroad tracks of this defendant are of necessity in such form as to make their use difficult and dangerous, or difficult or dangerous, on account of the excessive grades of the approaches to them, or otherwise, or at all; and, denies that in the replacement or rebuilding of any such bridges there should be a re-adjustment of the tracks of this defendant crossed by said bridges and viaducts and the approaches thereto.

IV.

Denies, that in order to relieve the people of the city and railroad cars and passengers from danger, damage or inconvenience of the existence of the numerous grade crossings and other conditions set forth in the complaint, or for any other reason, it will be necessary to concentrate the various tracks of the defendants, or to provide for the use by the lines of said defendants entering and leaving the city with passengers or freight of a central or union passenger depot, or of one or more central freight stations or depots; and, denies that it would be to the interests of said city, or of the passengers and patrons of this defendant, and of the other defendants, to establish, maintain or construct a union passenger station or one or more central freight stations or depots within said city; and this defendant denies that the tracks of this defendant constitute a barrier between the center of the city and the districts to the north and east thereof.

Wherefore, this defendant prays that said complaint be dismissed.

SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY,

By H. C. Nutt,
Its General Manager.

A. S. HALSTED,
General Counsel.

State of California,
County of Los Angeles.—ss.

H. C. Nutt, being duly sworn, deposes and says: That he is an officer of defendant, San Pedro, Los Angeles &

Salt Lake Railroad Company, to wit: its general manager; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on information or belief, and that as to those matters he believes it to be true.

H. C. Nutt.

Subscribed and sworn to before me, this 27th day of July, 1916.

(Seal) Amelia Guest,
Notary Public in and for Los Angeles County, State of California.

Received copy of the above answer this 27th day of July, 1916.

The Municipal League,
By T. E. Gibbon,
Its Attorney,
Per J.

(Endorsed): Filed at Los Angeles office of the Railroad Commission Jul. 27, 1916.

Filed Railroad Commission State of California, Jul. 28, 1916, Charles R. Detrick, Sec. Case No. 970 Ex.....

Before the California Railroad Commission.

Application No. 3346

In the Matter of Application of Southern Pacific Railroad Company, Southern Pacific Company, and Los Angeles & Salt Lake Railroad Company for approval of agreement for joint terminal facilities in Los Angeles, Cal.

APPLICATION.

I.

That your applicants are railroad corporations and the owners of and operating certain railroad terminal properties in the City of Los Angeles, State of California; that the postoffice address of each applicant has heretofore been filed with the California Railroad Commission, and each of your applicants has heretofore filed with the commission a copy of its charter or articles of incorporation.

II.

That hereto attached and made a part hereof is a copy of an agreement between your applicants, made and entered into under date of July 18, 1917, subject to the approval of the Railroad Commission providing for the joint use of certain of the terminal facilities of their respective railroads in the City of Los Angeles, California. There is also appended and made a part hereof a large scale print illustrating the proposed plan.

III.

That the proposed joint use of said terminal facilities provided for by said agreement would greatly add to the public convenience, safety and necessities in the City of Los Angeles, and would also be for the best interests of your applicants; that said proposed joint use would obviate the necessity for operation of passenger and freight trains over Alameda Street and certain other streets in the City of Los Angeles, and at the same time eliminate many grade crossing movements.

Wherefore, your applicants pray that the Railroad Commission of the State of California make an order approving said agreement dated July 18, 1917, between your applicants, Southern Pacific Railroad Company, Southern Pacific Company, and Los Angeles & Salt Lake Railroad Company, hereinabove referred to.

Dated November 19, 1917.

(Seal) SOUTHERN PACIFIC RAILROAD COMPANY,
By G. L. King,
Secretary.

(Seal) SOUTHERN PACIFIC COMPANY,
By G. L. King,
Assistant Secretary.

(Seal) LOS ANGELES & SALT LAKE RAILROAD COMPANY,
By H. C. Nutt,
General Manager.

A. S. HALSTED,
C. W. DURBROW,
Attorneys for Applicants.

State of California,
City and County of San Francisco.—ss.

G. L. King, being first duly sworn, deposes and says: That he is an officer, to-wit, secretary of Southern Pacific R. R. Co., one of the applicants in the above entitled application; that he has read said application and knows the contents thereof, and that the same is true of his own knowledge except as to matters therein stated on information and belief, and as to those matters that he believes it to be true.

G. L. King

Subscribed and sworn to before me this 19th day of November, 1917.

(Seal) E. B. Ryan,
Notary Public in and for said County of San Francisco, State of California.

(Endorsed): Before the Railroad Commission of the State of California. In the matter of application of Southern Pacific Railroad Co., Southern Pacific Co., and Los Angeles and Salt Lake Railroad Co. for approval of agreement for joint terminal facilities in Los Angeles, Cal. Application. ..... Attorneys for applicants, 828 Flood Building, San Francisco, Cal. Filed Nov. 22, 1917.

W. T.

Filed Railroad Commission State of California Nov. 22, 1917, Charles R. Detrick, Sec. Ap. No. 3346 Ex ——

Decision No. 8901

Before the Railroad Commission of the State of California.

The Municipal League, vs. Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, and San Pedro, Los Angeles and Salt Lake Railroad Company.	Case No. 970
Central Development Association of Los Angeles, vs. Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, and San Pedro, Los Angeles and Salt Lake Railroad Company.	Case No. 971
Civic Center Association of Los Angeles, vs. Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, and San Pedro, Los Angeles and Salt Lake Railroad Company.	Case No. 972

City of Pasadena, vs. Pacific Electric Railway Company, Southern Pacific Company, Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company and City of Los Angeles.	Case No. 974
City of Alhambra, vs. Pacific Electric Railway Company, Southern Pacific Company, Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company and City of Los Angeles.	Case No. 980
City of San Gabriel, vs. Pacific Electric Railway Company, Southern Pacific Company, Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, and City of Los Angeles.	Case No. 981

City of South Pasadena, vs. Pacific Electric Railway Company, Southern Pacific Company, Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, and City of Los Angeles.	Case No. 983
In the Matter of the Application of Southern Pacific Railroad Company, Southern Pacific Company, and Los Angeles & Salt Lake Railroad Company for approval of agreement for joint terminal facilities in Los Angeles, California.	Application No. 3346

Gibbon & Shelton, for Municipal League of the City of Los Angeles, Central Development Association of Los Angeles, and Civic Center Association of Los Angeles;

Marshall Stimson, for Central Development Association of Los Angeles, and Municipal League of Los Angeles;

Seward A. Simons, for Central Development Association of Los Angeles;

Joseph Scott and Edward D. Lyman, for Los Angeles Chamber of Commerce;

John Munger and J. H. Howard, for City of Pasadena;

Albert Lee Stephens, Howard A. Robertson, Chas. S. Burnell, Jess E. Stephens and H. Z. Osborne, Jr., for City of Los Angeles;

T. D. McFadden, for City of San Gabriel;

William Hazlett, City Attorney, for City of South Pasadena;

A. S. Halsted, for Los Angeles & Salt Lake Railroad Company;

C. W. Durbrow and George D. Squires, for Southern Pacific Company,

E. W. Camp and U. T. Clotfelter, for The Atchison, Topeka & Santa Fe Railway Company;

Frank Karr and E. E. Morris, for Pacific Electric Railway;

R. A. Rowan, for Los Angeles Realty Board;

Fred P. Gregson, for Associated Jobbers of Los Angeles;

F. L. Hilton & G. M. Lorraine, for City of Alhambra;

Gibson, Dunn & Crutcher, for Los Angeles Railway;

W. H. Workman, Jr., for Los Angeles City and County Viaducts Association;

Will D. Gould, President, for Northwest Improvement Association;

Charles W. Lyon, for City of Santa Monica and City of Venice;

Herbert J. Goudge, for Business Men's Association of Los Angeles;

W. C. Shelton, for Business Men's Co-operative Association;

R. W. Kelly, for Brooklyn Avenue and Malabar Improvement Association;

Leonard B. Slosson, for Municipal League of the City of Los Angeles;

George A. Damon, for City Planning Association;

Gordon G. Dunlap, Chairman of Los Angeles Conference of City Planning;

J. G. Wingert, for City of Whittier;

B. E. Page, for Business Men's Stability Association.

By the Commission:

OPINION.

These seven cases and the applications, with the consent of the parties, were consolidated into one proceeding.

In the seven cases the various complainants have asked the Commission to make a comprehensive investigation into the entire railroad situation in the City of Los Angeles, to the end that there be brought about elimination of grade crossings, the consolidation and unification of the tracks of the various railroads, the establishment of a union passenger station, and better freight facilities, and the Commission is asked to make its orders for the execution of definite plans upon the completion of such investigation.

Application 3346 is a joint application by the Southern Pacific Company (hereinafter referred to as the Southern Pacific) and the Los Angeles and Salt Lake Railroad Company (hereinafter referred to as the Salt Lake) asking the Commission's approval of an agreement between the two companies providing for the joint use of the Los Angeles terminal facilities of the two roads, and also for the possible joint use of certain facilities by the Pacific Electric Railway (hereinafter referred to as the Pacific Electric) and for the construction and use by that company of certain new and additional facilities. The Los Angeles and Salt Lake Railroad Company is the same company referred to in some of these proceedings as the San Pedro, Los Angeles and Salt Lake Railroad Company.

1—*Review of Proceedings.*

A brief history of these cases is necessary to an understanding of this proceeding. In July, 1915, several civic organizations of Los Angeles filed complaints against the Southern Pacific, the Salt Lake, the Atchison, Topeka and Santa Fe Railway Company (hereinafter referred to as the Santa Fe), and the Pacific Electric, asking relief of the grade crossing evil and betterment of transportation facilities. These complainants were joined by a number of other civic and commercial organizations, and by several municipalities in the neighborhood of Los Angeles until, in August, 1916, there were before the Commission the seven complaints consolidated in this proceeding and a considerable number of informal complaints. In July, 1916, upon the request of the City Council of Los Angeles, the Commission, in

an informal conference with the City Council, discussed the grade crossing, freight and passenger terminal conditions in Los Angeles and, at the conclusion of the conference, the City Council voted to contribute twenty thousand (20,000) dollars toward the expense of a complete and thorough investigation to be made by the engineering department of the Commission.

(a) *The Question of Jurisdiction.*

The question of the Commission's jurisdiction was raised by the railroads and by the City of Los Angeles (hereinafter referred to as the City.) In a hearing on this question of jurisdiction on September 15, 1916, all of the parties, except the City, urged that the Commission had specific jurisdiction over the issues presented. The City took the position that jurisdiction over all railroad grade crossings in Los Angeles was in the City and not in the Commission.

In October, 1916, the Commission rendered decision No. 3805 dismissing all proceedings. This action was taken for the reason that, while in the Commission's opinion the jurisdiction in the matters involved, under the terms of the Public Utilities Act, rested with the Commission, nevertheless the investigation asked for required the expenditure of so considerable an amount of public money and was of such great importance to the communities and the carriers involved that, in the Commission's opinion, no action should be taken until it was definitely established where jurisdiction rested in the premises. All of the parties were in agreement with the position taken by the Commission.

The matter was taken to the Supreme Court of the State of California by two writs of mandamus. The Supreme Court made its decision in both mandamus proceedings on June 11, 1917, upholding the position of the complainants and the Commission and decided that the Commission had exclusive jurisdiction over the construction and operation of railroads on streets in the City of Los Angeles (Civic Center Ass'n. vs. Railroad Commission, 175 Cal. 441). The court said:

"The effect upon the present case may be stated as follows:

"The City of Los Angeles has the power to open, widen, extend and improve streets and to regulate the ordinary uses thereof. The Railroad Commission, under Section 43 of the Public Utilities Act, has the power to make orders, which are binding upon the railroad companies under its supervision, to abolish grade crossings of the public streets of a city and to order a separation of grades so that the railroad and street shall not be upon the same level and generally to exercise the powers specified in that section. It cannot vacate the street or direct a cessation of the public use thereof. Its orders are to be directed to the railroad company and not to the city, except so far as may be necessary to apportion the expense of construction and maintenance of the particular mode of crossing which shall be required. The city has the power to alter the construction of its streets at such crossings, or any of them, by elevating them upon a viaduct so as to pass over the railroad or by making a subway passing under the railroad. In either case, if the change in the street does not interfere with the operation and use of the railroad at the time, the Commission cannot prevent the change and it may be made without the consent of the Commission. But if it does interfere, either at the time or afterward, whether by natural causes or lack of repair of the street as changed, or by reason of changes in the construction

or use of the railroad subsequently directed or approved by the Commission, the city must conform to the orders of the Commission so as to avoid such interference.

"It is ordered that the Railroad Commission proceed to consider and determine, upon the merits, the complaints made to it by the plaintiffs herein, and that a writ of mandate be issued to it in accordance herewith."

The city thereupon filed a petition for re-hearing. This petition was dismissed by the Supreme Court and the matter of jurisdiction is considered as settled by the Commission.

(b) *Engineering Investigation.*

Immediately after the order of the Supreme Court dismissing the city's petition for re-hearing, the Commission in public hearing made arrangements for the necessary engineering investigation. The Commission stated (transcript page 128):

"As is usual in formal complaints, the complainants will be permitted to introduce their evidence and then the defendants will present their testimony.

"The Railroad Commission proposes to conduct a thorough, comprehensive, and impartial investigation into the entire situation. The Commission will instruct its engineering department to make an exhaustive investigation and to prepare a report which will thereafter be introduced as evidence in these proceedings. Until this report has been prepared and introduced, and all the parties have had a fair opportunity to present their evidence and to cross-examine witnesses, no conclusion will be reached.

* * * * * *

"I assume that it will be entirely unnecessary to say that the Railroad Commission approaches this case, as every other case, with an absolutely open mind and with an earnest desire to ascertain all the facts, so that a just and constructive solution of the problem may be reached. It is our intention to view this problem in the largest possible aspect and to reach a conclusion which will serve the needs not merely of today, but also of the future. The people of the City of Los Angeles and the surrounding communities and railroads are entitled to an exhaustive and thorough consideration of the problems here presented and such consideration they will receive from the Railroad Commission.

"In this work, which will mean so much to the people of this community and the surrounding communities, as well as the railroads, the Railroad Commission, of course, expects the fullest consideration and co-operation from all parties—the complainants, the railroad companies, and the public authorities."

In December, 1917, public hearings by the Commission were continued until further notice pending the completion of the report which the Commission had instructed its engineering department to make.

(c) *Federal Control.*

Shortly after the assumption of operating control of the country's railroads by the federal government, the United States Railroad Administration issued its general order for the unification, as far as possible, of railroad facilities, including terminals in cities. Los Angeles was one of the cities whose terminals the Director General of Railroads desired to unify. He made request on this Commission to give him the benefit of its investiga-

tion and its recommendations in the Los Angeles grade crossing and terminal situation. As a result of this request, the Commission's engineering department made two reports, the first one in September, 1918, and the second in January, 1919. Both of these reports contained recommendations that could be put into effect during federal control and calculated to improve certain unsatisfactory traffic and grade crossing conditions, with the effect of considerable immediate savings in operating costs. While the recommendations in the first report were urged upon the Director General by the Commission alone, the proposals in the second report were the joint recommendations of the Railroad Administration's own engineers (who had been assigned to this problem by the Director General) and the engineers of this Commission.

These emergency recommendations, looking towards temporary unification of transportation facilities as a war measure, ceased to be controlling with the end of the war. With the railroad emergency passed and with the termination of federal control in sight, it was possible again to look towards the permanent rather than a temporary solution of the Los Angeles grade crossing and terminal problem, and the Commission's engineering investigation was continued on that basis.

(d) *Completion of engineering investigation and subsequent proceedings.*

In July, 1919, the investigation by the Commission's engineers was completed and the chief engineer made his report to the Commission. This report was printed

and distributed to all of the parties to these proceedings and was also made generally available.

At a hearing held February 17, 1920, the Commission arranged for a conference of engineers representing all interests to study the engineering department's report and to ascertain those matters on which there was agreement and those on which there was disagreement, asking the engineering conference to report to the Commission and give its reasons for the disagreements, if any. After a hearing on April 22, 1920, the Commission decided to withhold from consideration by the engineering conference questions of policy, apportionment of costs, operating agreements and financing.

The engineering conference made its report to the Commission on August 13, 1920, and a number of further public hearings were thereafter held until the proceeding was submitted.

A large number of exhibits were filed by the various parties to these proceedings. Much testimony was taken and witnesses for the complainants, the defendants, and the Commission were examined and cross-examined at great length. Arguments by counsel were heard by the Commission and briefs were filed, and the matter is now ready for a decision.

Since it will become necessary in this and in probable future decisions in this proceeding to make reference to some of the numerous exhibits introduced in these cases, a complete list is attached to this decision as Appendix "A".

2—*Results of Commission's Engineering Investigation.*

(a) *Commission's Exhibit No. 1.*

Commission's Exhibit No. 1, entitled "Report on Railroad Grade Crossing Elimination and Passenger and Freight Terminals in Los Angeles", by Richard Sachse, chief engineer, and dated July 31, 1919, contains the results of the investigation made by the Commission's engineers. As stated above, this report was printed and distributed not only to the parties in this proceeding, but to others interested in this matter.

The report goes exhaustively into all of the engineering matters before the Commission in these proceedings and deals with the following main divisions:

(a) Grade crossing elimination,

(b) Union passenger terminal,

(c) Joint main line and industrial trackage,

(d) Improvement and possible re-arrangement of freight and facilities,

(e) Electric interurban, street railway, and automobile traffic,

(f) City streets, viaducts, and bridges, and the relation of the transportation problem to the general subject of city planning.

Again, the engineering investigation distinguishes between:

(a) Work to be done within the city limits of Los Angeles,

(b) Work to be done outside the city limits of Los Angeles.

The work contemplated is dealt with in the report under the "unit system", and a program is laid down for—

(a) Work to be commenced and carried out immediately after a plan has been adopted,

(b) Work to be carried out later, and

(c) Work for the more distant future.

It will not be possible, in this decision, to review Commission's Exhibit No. 1, even in a summary way, and only the conclusions and recommendations of the chief engineer, contained on this letter to the Commission, of July 31, 1919, will be here quoted.

"It will be convenient to give to the Commission in this letter our conclusions in the three main branches of the investigation (possibility of grade crossing elimination; desirability, location and plan for a union passenger terminal; possibility for improvement in the freight situation) and in the matters related to these three main branches.

Grade Crossing Elimination.

This is the most important of the three subjects and is the one that is of most vital importance to the public and to the railroads. It is also the controlling engineering element in the entire report and, to a large extent, governs the solution of the union terminal and freight problems. We believe that all complaints against the unsatisfactory grade crossing conditions in Los Angeles, within the scope of this report, can be satisfied and that a permanent solution of the problem can be had by the adoption of our recommendations. These are:

1. Eliminate all important grade crossings on both banks of the Los Angeles River through the depression of the railroad tracks and the elevation of the streets by means of the im-

provement of existing, and the construction of new, viaducts across the river and across the tracks adjacent to the river, the streets to be so treated are North Main, Macy, Aliso, East First, East Fourth, East Seventh and East Ninth Streets. The North Spring Street crossing is to be entirely eliminated and Alhambra Avenue crossing is to be protected by an improved interlocking plant. The recommendations should be carried out substantially in the order and according to the plans given in this report.

2. Allow tracks to remain on Alameda Street but eliminate all (except approximately 3 per cent) of the present railroad traffic by diversion to better channels. The remaining traffic (consisting of switching service) is to be handled at night between Macy and Ninth Streets. Eliminate all main line traffic from Alameda Street.

3. Bring about the elimination of 61 street, 8 electric railway and 2 steam railroad crossings by the adoption of the Santa Fe plan for an improved line between Los Angeles and Pasadena. Bring about the elimination of an additional 28 grade crossings on the Salt Lake Railroad by requiring that road to join in the construction and the use of the proposed Santa Fe line and by the abandonment and removal of its present tracks between the termini of the proposed line.

If, in addition to the existing rapid transit lines, a municipal electric line should be built between Los Angeles and Pasadena, this line should be located on the same right of way (additional width to be acquired) and should be combined with the Santa Fe and the Salt Lake between Los Angeles and Pasadena.

4. Depress Santa Fe Avenue and raise the Butte Street tracks to eliminate the grade crossing at Butte Street and Santa Fe Avenue.

Union Passenger Terminal.

After a most exhaustive consideration of all arguments for and against a union passenger station in Los Angeles, we have come to the conclusion that the establishment of such a station is desirable both from the standpoint of the public and from the standpoint of the railroads, that the cost is justified and that the project can be financed. The reasons for this conclusion are given in detail in the body of the report.

We have found three sites adapted to the location of such a station, viz: The Plaza site, the Santa Fe Station site, and the Southern Pacific Station site. Detailed plans and estimates have been worked up by us for each of these locations, and the recommendations contained in the report have been fitted to each of the plans. Of the three plans, the Plaza plan is the best and it is our recommendation that the Commission order the establishment of a union passenger station at this site substantially in accordance with the plan we have developed.

Freight.

We believe that the matter of proper freight facilities is of even greater importance to the City of Los Angeles than the matter of steam railroad passenger facilities. It is our conclusion that freight traffic conditions are not unsatisfactory and that no far reaching recommendations are necessary to bring about such further improvements as appear to us desirable. Our recommendations in this connection are:

1. Tracks should not be removed from Alameda Street at this time, but all possible traffic should be removed from that street (see recommendation No. 2 above).

2. The so-called "Santa Fe Alley Spur" should be removed north of Butte Street.

3. Dealing with switching service and spur tracks for the future, we recommend that:

(a) New permits be not granted for industry tracks longitudinally in the streets.

(b) All tracks now longitudinally in the streets be confined to industrial purposes only and be removed as soon as better access to the industries served can be obtained.

(c) All spur tracks to be built in general easterly and westerly direction from the river banks and not across east and west streets unless, by such construction, the crossing of important north and south streets is avoided.

4. The establishment of a union freight station for less than carload freight at the Santa Fe freight yard site on Santa Fe Avenue from First to Seventh Streets is recommended. The present Santa Fe freight station is to become a part of this union freight station. This we consider a very important recommendation and one that will be of great and permanent benefit to the railroads and to the shippers in Los Angeles.

5. The establishment of team yards along the east side of Alameda Street is recommended, as outlined in the report.

6. We recommend the construction of new freight yards farther away from the industrial district. A new yard is recommended for the Southern Pacific, following the plans of this road, along the San Fernando Road, and a new yard for the Santa Fe is recommended on the Fullerton line just east of Hobart, on land already acquired.

Related Recommendations.

Related to the foregoing recommendations are certain other matters that are either before the Commission in various applications consolidated with this proceeding or that are important factors in the terminal problem and that fall within the scope of this report.

1. *Union Passenger Station and Electric Interurban Service:* If our recommendation for the establishment of a union passenger station at the Plaza is adopted by the Commission, we recommend also the construction of a subway from the present Pacific Electric station at Sixth and Main Streets northerly along Main Street to and under the passenger station, changing to an elevated railroad along Ramirez Street and meeting the present line at the Aliso Street bridge. This line from here would continue as an elevated railway to Brooklyn Avenue where the present tracks and grade would be met. This subway construction along Main Street should be undertaken within the next five years.

The present elevated Pacific Electric structure in the rear of the Main Street Station should be extended to Alameda Street and thence south to Fourteenth Street.

We realize that this is a far-reaching recommendation but believe it justified and essential in the interest of transportation and city development in Los Angeles, for reasons given in the report.

2. *Continuation of Consolidated Uptown Ticket Office:* This matter is related to our recommendation for a union passenger station. We urge that the existing consolidated uptown ticket office be continued, pending the establishment of a union passenger station after the railroads return to private control. This recommendation is made because the present arrangement instituted by the United States Railroad Administration has proved satisfactory in every respect to the public and to the railroads.

3. *Application 3346* (Southern Pacific Company and Salt Lake Railroad for approval of agreement covering joint terminal facilities). It follows as a result of the recommendations

contained in this report that this application should be dismissed.

4. *Application 2962* (Industrial Terminal Railway to issue stock for the construction of a switching and terminal railway): This application should be dismissed for the same reasons, although it will probably appear that with the adoption of our recommendations, another application of this nature will likely be filed later on in a modified form.

5. *Application 3037* (Los Angeles and Salt Lake Railroad Company for authority to establish 14 grade crossings in order to enable the construction of a freight terminal on Alameda Street): We recommend that this application be denied since our recommendation for a less than carload union freight station at the Santa Fe site will take care of all such freight requirements.

6. *Case 938* (Interlocking at Aliso Street and the Los Angeles River): In this case the Commission made its order directing the installation of an interlocking plant to control the Pacific Electric Railway, the Santa Fe and the Los Angeles and Salt Lake roads at this point. A supplemental order was later issued holding the matter in abeyance pending the completion of this report. Since our recommendations for the separation of grades and for a union passenger station will eliminate this crossing, the construction of this interlocker will not be necessary. An order should be issued to this effect after the adoption of our recommendations.

7. *Pairing of Southern Pacific and Salt Lake Tracks between Los Angeles and Colton:* The recommendation for such pairing of tracks was made to the Director General jointly by the engineers representing the Federally controlled railroads and by the Commission. Although this recommendation is very clearly to the

benefit of the interested railroads and although the improvement can be made with very small expenditure and although an annual saving in the cost of operation was estimated at $173,025 (and this estimate has in the meantime increased), nothing has been done to carry out this recommendation. We can see no reason and have no explanation for the inaction on the part of the United States Railroad Administration. The recommended plan will work perfectly with our recommendations and we again urge that the proposed pairing of tracks as outlined in the report be put into effect by the action of this Commission as soon as the operating control of the roads is released by the Federal Government."

Detailed cost estimates for the work included in these recommendations are contained in Commission's Exhibit No. 1. In these estimates, distinction is made between the costs of the various steps in the proposed ultimate plan, with the ultimate capital expenditure for all recommendations estimated at $32,233,445. Referring to this grand total, the report states,

"While a capital expenditure of over $32,000,000 seems large, it should be remembered that this money is to be expended over a term of years. In any event, whether the foregoing recommendations are adopted or not, very large capital expenditures aggregating probably in the neighborhood of the sum estimated by us will become necessary in the near future if the transportation of Los Angeles is to keep pace with the growth and the industrial and business development of the City. The choice is not between a large expenditure if these recommendations are adopted and a small one if they are not adopted; it is rather between an adequate and carefully planned development without wasteful expenditures and a haphazard growth dictated, in the main, by private interests from the standpoint

of each individual road. In either case the burden of capital and operating costs must, in the end, be borne by the public.

"It is impossible to estimate in dollars the direct and indirect savings and benefits through the carrying out of these plans that will accrue to the railroads, to the passengers, and to the shippers, and also to the people and enterprises affected by transportation conditions. We have no hesitation in saying, however, that, from the financial standpoint alone, the proposed expenditure is justified."

(b) *The Engineering Conference.*

There was opposition to and disagreement with, principally on the part of the railroads, certain of the conclusions and recommendations contained in Commission's Exhibit No. 1. This disagreement involved also what seemed to the Commission questions of fact and, in order to have the fullest information on all important engineering matters, it was decided to refer Exhibit No. 1 to a conference of engineers representing all parties.

Instructions were given to the engineers to carry this conference forward for the purpose of establishing, as clearly as possible, all matters of agreement and disagreement and to lay before the Commission the conference's views on the information and recommendations contained in this exhibit. In the course of the conference's activity, the question of the scope of its work arose and this matter was settled by the Commission's instructions issued as a result of the hearing held on April 22nd, which read as follows:

"The following instructions should govern the work of the engineering conference appointed to study the Los Angeles terminal report:

(1) The conference should consider the following engineering matters on the basis of the engineering department's report:

(a) As regards grade crossing elimination and freight improvement, *all matters of design, track layout and arrangement of facilities.*

The matter of a passenger terminal is to be handled as follows: The conference is *not* to recommend the location of a union passenger terminal; nor is it to report on the policy of establishing such a terminal. It is to report on the three plans for passenger terminals set forth in the Commission's engineering department's report *as to design, track layout, cost estimates, and operation.*

(b) *Matters of unit costs and estimates for the work proposed* under the various subdivisions of the report.

(c) *Matters of the advantages and the disadvantages of possible locations of the structures and facilities* contemplated in the report, including grade separations and freight facilities.

(d) *Matters dealing with* proposals and recommendations on *electric transportation* and recommendations affecting *interurban rapid transit and street railway traffic.*

(e) Matters of operation and traffic, including street, electric and steam railway traffic and all other traffic insofar as it is affected by the problems under consideration.

(2) The engineering conference is not expected to deal with the following matters:

(a) Apportionment of costs between the various parties.

(b) Traffic arrangements and operating agreements as between the various parties.

(c) Methods of financing.

(3) The Commission would like to have the conference report on the matters on which there is agreement between the engineers and on the matters on which there is disagreement, with reasons for the disagreement, if possible."

The engineering conference, in which twenty-two representatives of the various parties and three engineers of the Commission participated, divided its work among six sub-committees: grade crossing, union passenger terminal, freight, rapid transit and street railways, estimate, and electrification. These sub-committees reported their conclusions and these, together with the summarization by the Commission's chief engineer and certain exceptions taken by individual engineers, were introduced as Commission's Exhibit No. 2.

It may be said that the result of the engineering conference was an endorsement of the recommendations of the Commission's engineers, with certain changes and modifications in the proposed plans and with a revision of the cost estimates, due mainly to a revision of prices and costs as of March, 1920, reflecting the increased costs of labor and materials. This endorsement of the recommendations in Commission's Exhibit No. 1, however, was not unanimous, the Southern Pacific-Salt Lake-Pacific Electric engineers remaining in opposition to any plan not in conformity with the proposals advocated by this carrier group. The plans of these three interested railroads will hereafter be discussed. As a result of the study made by the engineering conference, the Commission's engineers revised certain of their plans and adopted a number of sugges-

tions made by the conference. These revisions and changes are set forth in Commission's Exhibit No. 2.

3. *The Position of the Railroads.*

There are involved in these proceedings all of the steam and electric railroads operating in Los Angeles. The two steam lines, the Southern Pacific and the Salt Lake, and the interurban electric and street railway, and Pacific Electric occupy, in general, the same position on the major questions concerned in these cases. The Santa Fe occupies an independent position and the Los Angeles Railway, the local street railway, is affected and interested to only a minor degree.

(a) *The Southern Pacific-Salt Lake-Pacific Electric Position.*

The view of these three carriers is set forth in the brief filed by counsel for the railroads. Substantially, it is as follows:

> It is denied that the Commission has jurisdiction to order the joint use of tracks or terminal facilities of interstate railroads.
>
> The freight terminal and industrial situation as it now exists in Los Angeles is satisfactory to all concerned.
>
> Complete grade elimination may be effected under the Southern Pacific-Salt Lake plan.
>
> The Commission's engineers' plan for relieving interurban traffic is impracticable.
>
> The elimination of grade crossings will cost less under the Southern Pacific-Salt Lake plan than under any other plan.
>
> Public interest does not require the establishment of a union passenger terminal, the question of expense is controlling and the expense of a terminal at the Plaza is prohibitive.

The adoption of the Southern Pacific-Salt Lake, Salt Lake-Pacific Electric plan meets the requirements of the travelling public, the city and the carriers.

The Southern Pacific-Salt Lake plan, as it was placed before the Commission in Application No. 3346 and modified subsequently by the railroads, as shown on the so-called Titcomb plan, provided substantially for the joint use of the present Southern Pacific passenger station at Sixth and Alameda Streets and for joint use of Salt Lake trackage on the east side of the Los Angeles River, together with elevated track connections commencing in the vicinity of Sixth and Alameda Streets and running easterly and by bridge across the Los Angeles River to a connection with the tracks of the Salt Lake. Provision is also made for a proposed passenger train car yard to be located on property of the Salt Lake Company, and for an ultimate joint interchange yard, upon property of the Southern Pacific, between Dayton Avenue and Aliso Street.

The agreement also provides that the Salt Lake shall grant to the Southern Pacific, for the sole use of the Pacific Electric, without rental therefor, a right of way for the construction and operation of a double track electric railway on the Salt Lake right of way, along the east bank of the river. It contemplates the continuation of the present Pacific Electric elevated structure from San Pedro Street easterly to Alameda Street. At Alameda Street, the Pacific Electric tracks would cross over the Southern Pacific steam elevated railroad, involving what may be called a "two-story crossing". West of Alameda Street, the Pacific Electric tracks

would run parallel and adjacent to the Southern Pacific tracks across the river to the right of way to be acquired from the Salt Lake to a connection with the present line. The construction and re-arrangement of numerous facilities are made necessary and are contemplated in this plan.

The plan itself and the agreement between the railroads do not make provision for a comprehensive elimination of grade crossings. The three roads declare themselves in general agreement, however, with the general plans shown in Commission's Exhibit No. 1, for the separation of grades.

The Southern Pacific is opposed to the Santa Fe's use of the proposed Southern Pacific-Salt Lake union passenger depot.

The position of the Pacific Electric was stated by its President, Mr. Paul Shoup, who declared:

> "Our position is tied up absolutely, speaking as a Pacific Electric officer now, with the Southern Pacific and Salt Lake plan, and none other is acceptable or would be acceptable to us among the plans presented."

It may be stated, therefore, that the position of these three railroads is in favor of the grade crossing elimination program as developed by the Commission's engineers, and is in favor of a joint passenger station, provided that such a station is located at the point selected by these railroads and provided the joint track and other facilities are constructed in accordance with the railroads' plans; and further provided that the Santa Fe has no part in such joint use. These three roads are

opposed to any proposals that are in conflict with these proposed arrangements.

(b) *The Santa Fe's Position.*

The Santa Fe is in favor of a separation of grades under a reasonable plan in general agreement with the plan outlined in Commission's Exhibit No. 1.

The Company calls attention to the necessity of careful consideration in the final adoption of grade separation plans of the flood conditions of the Los Angeles River and the necessity of lowering the Santa Fe main line tracks, and, especially, to the importance of a proper division of the expense. A separation of grades between Los Angeles and Pasadena this Company believes to be a matter for the future, because of the large expense involved.

The Santa Fe is opposed to a union freight station for handling less than carload business.

In the matter of a union passenger station, the counsel stated the view of the railroad as follows:

> "COMMISSIONER EDGERTON. Well, Mr. Camp, if there was—and I only say this to get an expression of position from you—if it was decided that the union terminal passenger station was advisable, which of the various ones suggested does the Santa Fe prefer?
>
> "MR. CAMP. Well, of the three which Mr. Sachse says are the only three which have been proposed, I understand that we would not prefer but we would dislike least the Plaza. But we are very far from standing here and advocating the Plaza site. We are not at all. And it does seem to us that the Commission could leave that to the very indefinite future, go ahead with the elimination of grades. Now, the first proposition, as I understand it, is to

eliminate grade crossings at Aliso and at Macy Streets, and that can be done without any reference to any union terminal station, passenger or freight. Why shouldn't it be done? And then discuss the terminal proposition at our leisure, say somewhere about 1935, or something of that sort."

(c) *Position of Civic Organizations.*

The *Business Men's Association* is in favor of the ordering by the Commission of steam railroad crossing elimination along the river and approves of the Salt Lake-Southern Pacific-Pacific Electric plan substantially as presented by these roads, and opposes the establishment of a union L. C. L. freight station.

The *Central Development Association of Los Angeles* endorses in all essentials the plans and recommendations of the Commission's engineers in Exhibit No. 1 and urges an order by the Commission adopting these plans and providing for successive steps for their consummation. A similar position was taken by the *Los Angeles City and County Viaducts Association*, the *Northwest Association*, the *Brooklyn Avenue and Malabar Improvement Association* and by the *Civic Center Association*.

The *Business Men's Co-operative Association* is in favor of the adoption of a comprehensive terminal and grade crossing plan and endorses the recommendations contained in Commission's Exhibit No. 1, especially as to the items of grade crossing elimination and union passenger terminal. This association, as also the organizations mentioned in the preceding paragraph, is opposed to the Southern Pacific-Salt Lake-Pacific Electric plan.

The *Municipal League of Los Angeles* suggests a further investigation, by the Commission, of a possible additional site for a union passenger station (at Sixth Street and the east bank of the Los Angeles River), which has not been reported on by our engineers, and on which no plans or estimates, except general sketches, are before the Commission. The Municipal League, however, has endorsed and is in favor of the grade crossing elimination plans in Commission's Exhibit No. 1.

(d) *Position of the City.*

Throughout these proceedings the City has maintained the position that an impartial and reliable investigation of the problems included in these cases should be made and that a program for their solution should be adopted based strictly on the merits of each feasible plan. The City urges that the Commission give due consideration to the necessity and convenience of the travelling and local public in Los Angeles and of the needs of the City as an important freight traffic center. The City also urges that the growing importance of Los Angeles, measured by the increasing population and industry, should be kept in mind and that relief be planned having regard to the reasonable needs of the future.

From this standpoint the City authorities and the City departments worked in close co-operation with the Commission's engineers during the investigation. The fact of the City contributing a considerable portion of the cost of the investigation further substantiated this position. The City has expressed its desire to further

co-operate with the Commission in bringing about the realization of such plans as may be adopted and has offered to assume its share of the necessary cost. The City's attitude has been expressed by the City Council in formal resolutions after submission of the case, from which we quote:

"Whereas, for some years the matter of eliminating grade crossings and co-ordinating and re-adjusting the transportation lines of the City of Los Angeles, so that the same shall represent modern, up-to-date, convenient and safe transportation in the City, has been before the public of the City and surrounding Municipal Communities, and during that time considerable money has been spent by the City to secure the opinion upon the matter of numerous experts; and

"Whereas, the City has obtained the opinion of the great Municipal transportation expert, Bion J. Arnold, of Chicago, upon the matter, and that opinion specifies as a necessary factor in accomplishing these purposes the creation within the City of Los Angeles of Union Passenger and Freight Stations; and

"Whereas, later a Commission appointed by the City, consisting of three able and impartial engineers, announce that in their judgment the creation of joint passenger and freight terminals was necessary to the solution of these problems; and

"Whereas, finally, at a cost of $20,000.00 to the City the matter was taken up with the State Railroad Commission for investigation and determination, and the engineering experts of the Commission have, after many months of investigation rendered an elaborate and costly report in which they also found that the creation of passenger and freight terminals were necessary to the accomplishment of the above mentioned purposes; and

"Whereas, the City Planning Commission, recently appointed by the Council for the purpose of making plans for the systematic development of our

city along lines which shall provide for civic beauty as well as civic convenience and necessity, finds itself unable to enter upon the making of said plans until the matter of abolishing grade crossings and co-ordinating our city transportation service in Union Stations is decided upon and the same are definitely located; therefore be it

"Resolved: That the State Railroad Commission is informed that it is the judgment of this Body that these matters should be decided upon as soon as possible, and that their decision, in accordance with the universal findings of the above mentioned engineering experts, should provide for the establishment of both Union Passenger and Freight Stations in the City of Los Angeles, and no other solution will satisfy this Council."

(From resolution of City Council of August 30, 1920.)

And, further from resolution of City Council of November 3, 1920:

"Whereas, the Chief Engineer of the State Railroad Commission has appeared before this council and explained in detail to it his report to the State Railroad Commission; and

"Whereas, this Council is deeply interested in having the State Railroad Commission decide the matter before it in a way which will best serve the interests of the City of Los Angeles, by the most complete elimination of railroad grade crossings and by providing the most efficient and comprehensive co-ordination of the transportation facilities of the City in a way which will best serve the present interests of the City and will most effectively provide for the entrance of other railroads desiring to build to the City in the future as well as for the extension of the present Harbor Terminal Railroad now owned by the City to a Union Station in the City to the end that our great and rapidly growing City shall, for both the present and the

future, have the most efficient transportation service; and

"Whereas, the City Council, knowing that the State Railroad Commission has had the services of the best engineering experts and has, with the assistance of such experts, gone into the whole matter in a most complete and exhaustive manner, and we have the fullest confidence in the judgment and honesty of the Commission and its capacity to render a decision which will best serve the interests of all concerned; now, therefore, be it

"Resolved: That in view of the great importance of this matter to our City, we respectfully request of the State Railroad Commission as prompt a decision as is compatible with existing conditions, in order that proceedings may be speedily begun toward relieving the dangerous and intolerable conditions now existing; and be it

"Further resolved: That this Council desires to assure the State Railroad Commission of its readiness and willingness to co-operate with the Commission in any and every way in carrying out its findings and recommendations; and be it

"Further resolved: That the City Attorney be instructed to file no brief with the State Railroad Commission, either advocating or criticising any of the various suggestions made to said Commission in the hearings of these cases."

Aside from the official position of the parties to this proceeding, there have been filed with the Commission numerous resolutions by chambers of commerce, improvement associations, civic and commercial organizations, and by local authorities of communities adjacent to Los Angeles endorsing or condemning the so-called Southern Pacific-Salt Lake-Pacific Electric plan and also endorsing or condemning all or part of the recom-

mendations made by the Commission's engineers and by the engineering conference.

4. *Conclusions of the Commission.*

There can be no doubt that the issues before the Commission have had a most thorough and impartial consideration and that every party represented has had the fullest opportunity to present its claims and to develop the advantages and weaknesses in any of the plans that have been presented. It is also apparent that the pending matter involves many technical questions which must be decided upon findings of fact made by technical men. Aside from the technical questions, a comprehensive program depends for its fulfillment to a great degree upon action within jurisdiction of the City, especially in so far as the matters of vacating or opening of city streets are concerned and in the matter of making available such portion of the cost of improvements as the City should bear.

The attitude of the carriers is quite clear. They are concerned with their own individual plans and there is no prospect that they will co-operate on their own accord to bring about a unification of transportation facilities with a view to reducing operating expenses or bettering the service and they are opposed to the adoption of a unified plan that will lay down the lines of their development in Los Angeles for the future.

The carriers are opposed to any considerable expenditures of new capital and this is a matter that must be given careful thought by this Commission. It is clear, however, that large expenditures will have to be made

by all the carriers, the steam railroads, as well as the Pacific Electric, for urgently needed betterments, regardless of whether these expenditures are made by each railway in pursuance of its individual plans or whether they are made jointly in the working out of a unified plan. While we are mindful, therefore, of the fact that the question of cost in the last analysis may be the determining factor, we cannot ignore the other fact that large capital expenditures have to be incurred in any event by the railroads and by the City. The conclusion is reached in Commission's Exhibit No. 1 that the choice is not between a large cost if a unified plan is adopted, as against a small one if no plan is followed. The choice is between an adequate and well planned development, on the one hand, and between inevitable wasteful expenditures and a haphazard growth dictated by the interests of the individual roads, keeping in mind that in either case the burden of capital and operating costs must, in the end, be borne by the public.

The soundness of this conclusion has been confirmed by the testimony of all witnesses in this proceeding and we have no doubt of the superiority of a well thought out plan to take care of the present and future transportation needs of Los Angeles, as compared with haphazard competitive development, provided it is possible to carry out such a plan at a reasonable cost.

This opinion is in accordance with the conclusions reached not only by every technical and expert study made in recent years in similar terminal problems elsewhere in the United States, but it is also the view

adopted by the owners of the railroads themselves. The recognition of the necessity that in the future we must have in this country unified railroad terminal development in the larger cities has been definitely incorporated by Congress in the new Transportation Act. It is in that act also recognized that it will not be sufficient to leave the necessary terminal unification to the carriers alone. Power is given the Interstate Commerce Commission in the Esch-Cummins Act to order terminal unification.

This, it seems to us, is a sound and inevitable development. With the present relation between the railroads and the people, whereby the government undertakes to fix rates under a prescribed system designed to give to the railroad as nearly as may be a guaranteed income, in addition to a guaranteed reimbursement of operating expenses, it seems self-evident that every effort must be made to furnish the best possible transportation facilities at the lowest possible cost. It has been amply demonstrated in recent years that the points of greatest waste and greatest congestion in the railroad system are the terminals. We believe, therefore, that unification of terminals, wherever such unification is physically possible, and wherever operating economies can be effected, is bound to come and is only a question of time.

Applying these considerations to the proceeding before us, it is also evident that the elimination of grade crossings in the heart of the city, along the banks of the Los Angeles River, and on the main lines approaching the city can be accomplished with greater certainty and at less cost than if grade crossing elimination is

imposed upon each separate railroad as a separate undertaking.

The conditions in Los Angeles for a unified treatment of the railroad problem appear to be almost ideal. This is the conclusion in this proceeding, not only of the Commission's engineers, of the engineers of the City of Los Angeles, and the engineers representing parties other than the railroads, but the same conclusion was reached in investigations made by other engineers in years past. Similar decision was reached by a committee appointed by the Mayor of Los Angeles upon the request of the Public Utilities Committee of the Council to study this question on the basis of Commission's Exhibit No. 1. This committee, after an exhaustive study, made the following final recommendations in its report to the Mayor and to the City of Los Angeles:

> "1st. The immediate abolition of grade crossings by carrying out the design of depressed tracks along the river banks, and the building of a Union Passenger Station at the Plaza, and the development of a multiple system of L. C. L. freight terminals, in general accord with the design set out in the Report; and,
>
> "2nd. That the City join with and continue to cooperate with the State Railroad Commission in carrying out the plans for the above mentioned designs, as set out in the Report of the Chief Engineer of the Railroad Commission, accompanying his letter of transmittal of July 31, 1919."

The engineers of all the steam railroads involved in this proceeding, who have taken part in this investigation as employees of the individual carriers, but who, during federal control, were employees of the United

States Railroad Administration, then expressed themselves as in agreement with the principle of terminal unification and so reported to their respective superior federal officers.

We believe that the terminal unification and the grade crossing problem should not be disassociated and that the adoption of a plan providing for both problems is essential.

(a) *Grade Crossing Elimination.*

There appears to be no disagreement as to the necessity and urgency for the elimination of the railroad grade crossings on both banks of the Los Angeles River and along Alameda Street. Neither is there any material dispute as to the method to be employed to bring about the elimination of the river grade crossings. To remedy the Alameda Street situation requires changes in the existing passenger and freight facilities and there is some dispute as to the methods to be followed to eliminate these crossings.

All parties appear to agree that the program and method for grade crossing elimination proposed in Commission's Exhibit No. 1 is a feasible and sound one. It remains to determine what should be the first step in the crossing elimination plan and, after definite and detailed plans for the elimination of the separate crossings have been filed with and accepted by the Commission, to apportion the cost to the interested parties.

Traffic studies made by our engineers, and reported in Commission's Exhibit No. 1, indicate that in 1917-18 about 65,000,000 people annually crossed the Los Ange-

les River and the tracks of the Santa Fe on the west side and of the Salt Lake on the east side, adjacent to the river, divided as follows:

	People per annum:
Over present 5 grade crossings	33,000,000
Over present 4 viaducts and bridges	32,000,000
Total	65,000,000

The railroad traffic at the time of the investigation amounted to about 560 train movements each day, from 6 A. M. to 8 P. M., or at least 600 movements for 24 hours for the five existing grade crossings mentioned. On 7th Street the crossing gates were found closed as much as 19 per cent of the daylight hours.

Numerous accidents have occurred on these crossings and the delay to vehicular traffic and to interurban electric cars, as also to street cars, is serious. There is no dispute that public safety, necessity, and convenience require the abolition of all of these grade crossings.

Commission's Exhibit No. 1 proposes that elimination be brought about by construction or reconstruction of *viaducts across the railroads and the river* with suitable grades of approach and through depression of the railroad tracks and the elevation of the streets. The streets affected by the river crossing program are the following: North Spring, North Main, Alhambra, Macy, Aliso, East 1st, East 4th, East 7th and East 9th, and the detail of the recommended depression of tracks and elevation of streets at these points is shown in Commission's Exhibit No. 1. The Engineering Conference,

above referred to, approved of all these designs except at Aliso Street. There it was advised that the bridge should, in the future, provide for vehicles and pedestrians as well as the Pacific Electric tracks. The Commission is in agreement with this suggestion and when definite plans for this particular crossing are made, the design appearing on Page 173 of Commission's Exhibit No. 1 should be modified accordingly.

On *Alameda Street*, the traffic studies indicate that in a year of the investigation approximately 78,000,000 people crossed Alameda Street in its most congested part (Spring Street to Alameda Street) divided as follows:

Location	Important Streets	Electric Railways	People per annum crossing tracks
North of Arcade Station	9	6	59,000,000
South of Arcade Station	4	1	19,000,000
Total	13	7	78,000,000

The railroad traffic is very heavy; the average street north of the Arcade Station is crossed by 157 train movements each day, and the average street south of the station is crossed by 98 train movements.

Accidents have occurred and there is an important delay to both railroad, vehicular and electric railway traffic. At both Sixth and Seventh Streets the crossing gates are down over 15 per cent of the daylight hours. Both danger and delay will increase as time goes on.

It is not practicable to bring about on Alameda Street a physical separation of grades. For reasons

stated fully in Commission's Exhibit No. 1, it is recommended by our engineers that the tracks be allowed to remain in that street, but that all except approximately 3 per cent of the present railroad traffic be diverted and that the remaining traffic, consisting of switching service only, be handled after midnight between 1 and 6 A. M. between Macy and Ninth Streets. All mainline traffic should be eliminated. This will do away with practically all danger and inconvenience resulting from grade crossing movements and will, at the same time, not disturb existing business and industrial conditions. Practically no increase in railroad operating costs is expected to result from this important change. The Engineering Conference, as also the Mayor's and City Council's Advisory Committee, is willing to continue industrial trackage and switching service on Alameda Street with the understanding that Alameda Street tracks shall not be connected with any station yards or express yards, nor switching yards, nor team yards, but that all such facilities shall be reached by tracks directly from the main lines on the river bank. The Commission believes that the suggested provision should be made an essential condition of the proposed Alameda Street arrangement.

In Commission's Exhibit No. 1, it is recommended that *between Los Angeles and Pasadena* all grade crossings of the Santa Fe and of the Salt Lake be eliminated. This is to be effected by a reconstruction and partial relocation of the existing Santa Fe Line and abandonment of the present Salt Lake line and the latter road's participation in construction and joint use

of the new trackage or roadbed. This plan will eliminate 61 street, 8 electric railway, 2 steam railroad crossings on the Santa Fe and 28 grade crossings on the Salt Lake. The Commission believes that this important grade crossing elimination plan should form a part of the general plan which it is proposed to lay down in this decision. We are of the opinion, however, that this work need not form part of the first step of such grade crossing elimination as should be immediately undertaken.

This *first step* should provide for grade separations at Macy, Aliso and Seventh Streets. This selection is because of the fact that at *Macy Street* the vehicular traffic is heavier than at any other existing crossing and the present highway bridge is entirely inadequate to handle this traffic. The present bridge is of inexpensive wooden construction and well along toward the end of its life. There is involved the crossing of three steam railroad tracks, two Santa Fe tracks on the west side of the river and a Salt Lake track on the east side.

Grade separation at Macy Street should be made substantially in accordance with Figure 41, Page 168, of Commission's Exhibit No. 1, that is, by depression of the railroad tracks adjacent to the river to elevation 272.0, City datum, and by raising Macy Street to elevation 297.0. The grades of approach on Macy Street should be 4%, as shown on Figure 41, just mentioned.

Grade separation at Macy Street, according to this plan, being predicated on partial depression of the tracks, it is absolutely necessary that the *Aliso Street* crossings be eliminated at the same time, because of

the short distance between these streets and the fact that practicable railway grades cannot be laid leaving either street at its present elevation and separating the railway and street grades at the other.

Grade separation at Aliso Street should be accomplished substantially as shown on Figure 46, Page 175 of Commission's Exhibit No. 1. The local tracks only need to be constructed at this time and the plan should provide for the construction of a highway bridge as well as a railway bridge at some time in the future. The steam railway tracks should be, as shown, depressed to elevation 267.7 and the Pacific Electric tracks raised to elevation 294.2, both City datum.

In connection with the grade separations at Macy and Aliso Streets the Santa Fe should take up its present main line tracks across Macy Street at about Center Street and across Aliso Street, between Center Street and Los Angeles River, and divert all its traffic to the track adjacent to the west bank of the river.

The grade crossings on *Seventh Street* at both sides of the Los Angeles River are also immediately in order for elimination, because of the fact that the vehicular traffic is extremely heavy, as shown by Figure No. 22 in Commission's Exhibit No. 1, and there are three tracks of the Salt Lake on the east side of the river and four tracks of the Santa Fe on the west side. The railway traffic is also heavy.

The grades of Seventh Street and the railways on the east and west banks of the Los Angeles River should be separated by partial depression of the tracks and partial elevation of Seventh Street substantially as

shown on Figure 56, Page 185, in Commission's Exhibit No. 1.

The carriers will be ordered to submit to the Commission, within a reasonable time, definite plans and cost estimates for these grade separations based on the general plans contained in Commission's Exhibit No. 1. It will be necessary that these plans be approved or modified by the City. The Commission, after approval or modification, will thereupon fix a fair division of cost by subsequent supplemental proceeding and order.

(b) *Freight Facilities.*

Commission's Exhibit No. 1 proposes an improvement in the handling of less than carload freight in the City of Los Angeles by provision for a union freight station at the Santa Fe freight yard site on Santa Fe Avenue. The existing conditions relative to the handling of carload freight are found to be satisfactory and it is recommended that nothing be done to disturb this satisfactory situation. The importance of properly serving the large number of industries now having trackage connections with the Alameda Street line is recognized, and this is the reason for the recommendation against the removal of tracks from Alameda Street at this time. This matter has been discussed above in connection with the subject of grade crossing elimination.

The City urges against the adoption of a *single* union less than carload freight station and desires that provision be made for several of such stations in different parts of Los Angeles. There is, however, no opposition on the part of the City to the selection of the Santa Fe site for the first of such possible union freight stations.

There is opposition on the part of the representatives of the railroads to the establishment of a union freight station either at the Santa Fe site or elsewhere. The railroads urge that the present practice of each carrier owning and operating its own freight stations be continued and that each carrier be permitted to develop its freight facilities in view of its own needs.

We are impressed by the arguments advanced by our engineers that the existing freight facilities in Los Angeles cannot remain indefinitely in their present condition, and that large expenditures will shortly become necessary irrespective of whether the railroads act jointly or continue independent action in the future. We are not persuaded, however, that the freight situation is such as to require at this time a specific order for the establishment of a union less than carload freight station. Whether or not existing freight stations, or new ones to be established by the individual railroads, shall be operated as joint or union freight stations, may be left, we believe, for subsequent decision.

Regardless of whether or not there will come about a unification of freight facilities, we are convinced that the future handling of freight traffic in Los Angeles should be governed by certain considerations which appear to be the conclusions of a number of independent engineers who have studied this question and which also reflect the expressed desires of the Los Angeles city authorities. These are that—

(1) new permits should not be granted for industrial tracks longitudinally in streets,

(2) all tracks now longitudinally in streets be confined to use for industrial purposes only and be removed as soon as access to the industries served is otherwise obtained,

(3) all spur tracks shall be built in a general easterly and westerly direction from the river banks and not across east and west streets, unless, by such construction, the crossing of more important north and south streets is avoided.

In this connection the establishment of team yards along the east side of Alameda Street is also recommended and suitable locations for such yards, in conformity with the general plan suggested in this decision, will be at College and Alameda Streets, at Macy and Alameda Streets, at the Los Angeles Market site, and possibly at the proposed Salt Lake terminal site.

(c) *Union Passenger Station.*

There has been presented before the Commission by the complainants in this proceeding, and by others, the most insistent advocacy for the establishment of a union passenger station and also, on the part of several of the carriers and other parties, the most insistent opposition to such a station. We are impressed that in the partisan arguments for and against a union station the essential facts have to some degree been lost sight of. We see no reason why this question should not be discussed on its merits and determined in accordance with the essential facts in the same manner that it has been agreed the other branches of this investigation should be decided.

The advantages and disadvantages of a union passenger terminal, we think, have been fairly and rather

completely discussed in Commission's Exhibit No. 1. The statements contained in that exhibit that the establishment of a union passenger terminal is largely a question of its desirability and of its cost, and that it is not entirely a railroad matter, but also one of public policy, we believe to be statements of fact. To give the principal reasons for and against the establishment of a union station, we quote from Commission's Exhibit No. 1:

"A union passenger station is desirable for the following reasons:

(1) As a gateway to the city, Los Angeles prefers one adequate, convenient and beautiful entrance to several separate gateways, none of which can by themselves have all the advantages of a single union depot. This is a matter of civic pride and of city planning for the future. Los Angeles, by reason of its wonderful advantages as a tourist center and as a center of travel, is justified and is sound, in our opinion, in making this consideration one of the first importance.

(2) There will be increased convenience to passengers. Since mail, express, and baggage is carried on passenger trains, it is more economical to handle this business at one station. $10,000.00 per annum would be saved in the handling of mail if a terminal post office were established. The express business amounts, in tonnage, to about one-fourth of the less than carload freight business of Los Angeles and much would be saved by elimination of the wagon haul between the various depots. This saving cannot readily be estimated in terms of money and is dependent on the location of the main depot. The more central the location, the greater the saving. Baggage is also transferred between the stations and—while of lesser importance in cost—increased convenience would result.

(3) Grade crossing elimination would be simplified. When it is maintained that there is no necessity for a union station, it must be remembered that the retention of more than one station will necessitate greater expenditure for the elimination of grade crossings, and pending complete separation, will result in more vehicular movement across tracks at grade.

(4) Present passenger facilities of the Santa Fe and the Salt Lake stations are inadequate. Large capital expenditures must soon be incurred in any event to satisfy present and future needs. This is true to a lesser extent of the Southern Pacific station also. A union depot will fill these needs better, permanently, and at a relatively smaller cost than piecemeal construction by individual roads regardless of the problem as a whole. If the three steam roads now had satisfactory facilities, this argument would be less important. Under existing conditions, it is of prime importance.

(5) The topographical conditions and location of the railroads in Los Angeles are almost ideal and point definitely towards a union station. These natural conditions are such that a union station can be created with comparatively inexpensive connections between the roads at a relatively small capital expenditure. Long and costly approaches are eliminated and there is no doubt that the first cost will be relatively much smaller than for a similar undertaking in other communities of equal importance in the United States.

The principal arguments against the establishment of a union station are:

(1) Los Angeles is not a through station. Practically all trains entering the city terminate there, and it is there that the majority of the passengers reach their destination. Only approximately 15 per cent of the total number of passengers transfer from one station to another.

(2) The first cost of any adequate union passenger terminal will be high and the saving in operating expenses will not alone warrant the resulting increase in fixed charges."

These points are discussed in detail in the report and the conclusion is reached that, taking all arguments into consideration, a union station is desirable, provided it is suitably located. Three locations were considered worthy of consideration and detailed analysis by the engineers making the investigation: The Plaza site, the Santa Fe site and the Southern Pacific site. A fourth, and what might be termed the Salt Lake site on the east bank of the Los Angeles River, was suggested after the completion of the engineering investigation. The arguments for this fourth site are general and no data are before the Commission sufficiently adequate or detailed to permit of any comparisons in estimates of this site with the other three. It is apparent, however, that the location on the other side of the river from the main portion of the city is a serious disadvantage, and it is also apparent that there would be opposition on the part of the city authorities and of other parties to that location.

Detailed estimates and exhaustive comparative studies were made by the Commission's engineers for each of the three investigated sites. Plans for track layouts and other facilities were drawn and careful investigation was made in each case of the additional lands and other facilities required for each site, and of the lands and other facilities that would be released and become non-operative property in each instance. This information is available in Commission's Exhibit No. 1. The ad-

vantages and disadvantages of each of the three sites were set forth and the effect on cost and on operation was considered. Recommendation is made to the Commission that a union passenger station at the Plaza site be established substantially in accordance with the plans contained in Commission's Exhibit No. 1, and the reasons for the selection of that site are stated as follows:

(1) *Size and shape of site.* The Plaza site is much wider and longer than the Southern Pacific Station site and is equal to the Santa Fe site, which is too large.

(2) *Greater architectural and aesthetic possibilities.* Civic pride and the advertising value of this feature is of particular significance to a tourist center. At the Plaza, a suitable park to set off the station is possible with least damage to business, and at least cost, and at the intersection of important streets. The Santa Fe freight station interferes at the Santa Fe site, which has the least possibilities in this respect.

(3) *Ultimate rapid transit.* The Plaza site is on a more probable axis of the ultimate rapid transit system which would be nearer and more convenient to the station than with either the Southern Pacific or the Santa Fe plans. More interurban passengers would pass the Southern Pacific site than the Santa Fe site.

(4) Because of the separation of passenger tracks from the future main switching leads along the west bank of the river, there would be less *interference with switching* with the Plaza plan than with the Santa Fe plan, which presents bad operating conditions because of too much traffic in one place. The Plaza plan is nearly equal to the Southern Pacific plan in this respect.

(5) *Least train coach equipment, and light engine mileage.* The Plaza site is very superior to

the other sites, largely due to the location at a more northerly point. The Southern Pacific plan is worst in this respect.

(6) *Union freight station.* The Santa Fe site is particularly suitable for a union freight station, which is possible either with the Plaza or the Southern Pacific plans. The Plaza plan is equal to the Southern Pacific plan and both are better than the Santa Fe plan.

(7) *Grade crossing separation.* With the Plaza plan, no elevated railway structures are necessary in uptown district or awkward subway and crossings in a very important thoroughfare, as with the Southern Pacific plan. The Plaza plan is nearly equal to the Santa Fe plan.

(8) *Accessibility by street car lines.* Sixty per cent of the passengers use the street cars. With the Plaza plan more are accommodated without transfer than at the Southern Pacific or the Santa Fe sites. In this respect the Southern Pacific site is more convenient than the Santa Fe site.

(9) *Distribution and collection of mail and express.* The Plaza site is nearly as good as the Southern Pacific site. The Santa Fe site is farther and less accessible than either.

(10) *Operation of yard and coach yard.* The Plaza site is better than the Santa Fe site because of the proximity of the coach yard, notwithstanding the fact that a through station is possible at the latter site. The Southern Pacific site is the worst as the coach yard is distant, a sub station is necessary and the approach is on a steep grade.

(11) *Property values.* Considering ultimate appreciation and neglecting immediate disturbances, the Plaza plan is far superior and the Southern Pacific plan is far better than the Santa Fe plan. The ultimate appreciation with the station at the Plaza site and a union freight station at the Santa Fe site is estimated at over $8,000,000. This is of ad-

vantage to the City in the restoration of depreciated property values.

(12) *Convenient to hotel, business, and shopping districts.* The Plaza site is slightly less convenient than the Southern Pacific site, which is much superior to the Santa Fe site.

(13) *Accessibility by automobiles.* The Plaza site is superior to the Southern Pacific site from all points except the business district, where the inferiority is slight. Both are better than the Santa Fe site.

(14) *Locomotive service and repair facilities.* This is partly covered in No. 5. Otherwise the Plaza site is first, the Santa Fe second, and the Southern Pacific third with respect to use of present facilities and construction of new facilities.

(15) *Freight draying.* The Plaza site is best inasmuch as passenger and freight vehicle traffic is separated. The Santa Fe site is worst since both classes would be in the same district.

(16) *Confinement of transportation facilities to natural channel—the banks of the Los Angeles River.* The departure of the Plaza site is not of great importance because of location and improvements. The Santa Fe site is slightly better than the Plaza site and much better than the Southern Pacific site.

(17) *Release of lands in industrial district.* Arranged in order of benefit, the three plans compare as follows:

Plaza: Release Southern Pacific station and coach yard sites.

Santa Fe: Release Southern Pacific station site; use coach yard for team tracks.

Southern Pacific: Release coach yard site.

(18) *Segregation of freight and passenger routes.* This is best accomplished by the Southern Pacific plan, but the Plaza plan is not much inferior. The Santa Fe puts both passenger traffic

and freight switching along the west bank and is in this way far inferior in this respect.

These and other considerations are discussed in the Exhibit.

More thought and study have been given to the selection of a site for a union passenger terminal, because of the clash of contending interests, than to any other feature of the entire transportation investigation. The availability of the various sites was tested against a set of general requirements which it is acknowledged are essential to the location of any union passenger depot. While it is true that there may be varying degrees of importance placed on different requirements, it is also true that a better and fairer judgment of the availability of a particular site can be reached in this manner than by depending alone on the arguments of the party whose interest is immediately affected.

We reach the conclusion from a careful consideration of all the evidence before us that the establishment of a union passenger depot is feasible and desirable, and is necessary in Los Angeles, and we are satisfied that the so-called Plaza location is superior to other possible locations and that the union passenger station should be located at that site. We come to that conclusion without subscribing on all points to the conclusions reached by our engineers in Commission's Exhibit No. 1 and in the testimony given by witnesses on that point, and without agreeing entirely with all the reasons given by the engineering conference when they, in part, endorse the report of the Commission's engineers, or with the report of the Mayor's and City Council's Advisory Committee.

The opposition on the part of the Southern Pacific, Salt Lake, and Pacific Electric Railroads, to the Plaza site, apart from the question of cost, is readily understood. The representatives of these roads have frankly admitted that they are in opposition to any plan that will interfere with the consummation of their own proposal, which provides for a partial union passenger terminal on the present Southern Pacific depot site. It is to be noted, however, that even these railroads are not opposed to terminal unification per se; rather are they in favor of it. They do not desire, however, to depart from their own plans and hold their individual and immediate interests paramount.

The Commission finds as a fact that public necessity and convenience demand a unification of passenger terminal facilities in Los Angeles and an order will be made requiring the interested carriers to prepare, within a reasonable time, detailed plans and estimates for an adequate union passenger station at the so-called Plaza site. The exact location of the site cannot be prescribed at this time except to the extent that the union passenger station shall be located in the territory in the City of Los Angeles bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue and the Los Angeles River.

We are not prepared, at this time, to make a finding as to the minimum amount of expenditure that should be estimated and provided for in the construction of such a station, and are of the opinion that this matter should be left for subsequent decision. Neither do we believe it wise or necessary to insist that the plans for such a

station, with its necessary facilities, should follow exactly and in detail the plans set forth in Commission's Exhibit No. 1. As a result of the engineering conference, and of the last hearings before the Commission, some important and some minor changes were made, or agreed to, in the plans first suggested by our engineers, and it is certain that other modifications and changes will develop with further study. We are also satisfied that a plan can be made that will overcome the difficulties suggested during the last hearings by the railroads and by the representative of the Business Men's Association. The Los Angeles city authorities must, of necessity, have an important part in the design of any definite plan, and a modification of the plan in Commission's Exhibit No. 1 may have to come about if it should definitely develop that the city is unwilling to vacate the necessary portions of streets and the Plaza.

The Commission, in reaching its conclusion that the union passenger depot should be located at the Plaza site, assumes that the city will carry out its repeatedly announced intention to further in every possible way the consummation of the general plan which, by resolution, the city authorities have so strongly urged the Commission to promulgate in this proceeding.

It remains to provide for suitable machinery and procedure to accomplish the end sought. As an initial step it will be necessary for the interested carriers to submit for the approval of the Commission detailed plans and estimates of the proposed union passenger terminal. The plans and estimates made by the carriers

should be concurred in, or suggestions for modifications should be made, by the city. The Commission will not desire to approve or modify a plan until the plan fulfils, as nearly as may be, the joint and combined needs and desires of the interested parties. In view of the wide divergence on this subject, by the carriers themselves on the one hand and between the carriers and the city on the other hand, it is not reasonable to expect that an agreement will be reached on a plan or design if the matter is left to the individual action of these parties.

We are of the opinion, therefore, that the carriers should appoint an engineering committee, with a chairman who shall be satisfactory to the carriers, to the City of Los Angeles, and to the Commission. The City of Los Angeles should be also represented on this engineering committee.

Instructions are to be given to this engineering committee to prepare within the time specified by the Commission such plans and estimates as will completely and in good faith meet the requirements for a union passenger station laid down in this opinion and order. In case of disagreement by the engineering committee on any matter properly before the committee, and connected with the design and estimates of the plan, the decision of the chairman of the committee shall govern, with the understanding that each party shall have the right to present to the Commission its views when the plan and estimate is submitted to the Commission for final approval, as provided for in this decision.

It is not our intention that an engineer of the Commission should be a party to this conference but there can, of course, be no objection to the engineering conference keeping in close touch with the Commission, and the Commission's engineering department, in order that no delay or conflict may result from misunderstanding.

The engineering committee should also handle the preparation of the plans and estimates for the grade crossing eliminations heretofore discussed in this opinion.

The Commission is aware that such important questions as a division of cost of the proposed union terminal, the method of its financing and construction, provision for its operation, and other important legal, financial, and operating matters must have careful consideration and that conclusions must be reached on such questions. It would serve no purpose, however, in our opinion, to deal with these matters at this time, and they will be left for further decision after plans and estimates have been submitted and approved.

(d) *Electric Railway Transportation.*

Two electric railways are affected by this proceeding: The Pacific Electric and the Los Angeles Railway.

The *Los Angeles Railway* operates the street car system (narrow gauge). It is of importance that arrangements should be possible to give adequate street car service to the proposed union passenger station and no difficulties will be encountered in that respect with the

proposed Plaza location. The carrying out of the passenger terminal plan will result in some slight re-routing of car lines, but it is to be noted that, from the standpoint of street railway traffic, a union passenger station at the Plaza site will be very favorably located. Commission's Exhibit No. 1 contains the recommendation that, to avoid street car congestion near the site of the Plaza terminal, a sub-tunnel under the present Broadway tunnel be constructed. This matter appears to require further study and will be a proper subject to refer to the proposed engineering committee.

The Los Angeles Railway will also, to some extent, be interested in and affected by a number of the grade crossing separations proposed in the general plan.

Plans affecting the *Pacific Electric System* and interurban electric rapid transit form an important part of these cases. An appreciation of the importance of the Pacific Electric service may be had when it is stated that, in 1918, approximately 68,000,000 passengers were carried on that system divided about equally between interurban and local passengers and, in 1917, this road carried 65,000,000 passengers, while in the same year the steam roads of the entire State of California carried only 39,000,000.

The Pacific Electric is also an important freight carrier, its importance as a freight road being exceeded by only two California railroads, the Southern Pacific and the Santa Fe. It should be stated in this connection that the Pacific Electric is a subsidiary of the Southern Pacific, and the latter company controls the former through stock ownership. It is apparent that

the proper development of this electric road is of vital importance to the well being of the communities interested in these proceedings.

In Commission's Exhibit No. 1, the Pacific Electric problem is dealt with at some length and recommendations are made for the construction of a subway from the present station at Sixth and Main Streets northerly along Main Street to and under the Plaza union station, changing to an elevated railway along Ramirez Street, and meeting the present Pacific Electric line at the Aliso Street bridge. From here this line would continue as an elevated railway to Brooklyn Avenue where the present tracks would be met. It is further recommended in the exhibit that the Pacific Electric continue the present elevated structure at the rear of its Main Street station, elevating the Long Beach line to Fourteenth Street, with provision in the design for a future connection with the subway in Sixth Street. Recommendations dealing with grade separations on Pacific Electric lines have already been mentioned in connection with the discussion of grade crossings.

A considerable amount of testimony other than that given by the Commission's engineers was introduced relative to the Pacific Electric and the company's president, Mr. Paul Shoup, gave testimony opposing a subway on Main Street. He declared in favor of the method of dealing with Pacific Electric traffic proposed in the Southern Pacific-Salt Lake-Pacific Electric plan.

As long ago as 1911, the necessity and desirability of a north and south subway in the congested part of the city, located on Broadway, Spring, or Main Streets, and

an east and west subway, making a connection between the Pacific Electric Hill and Main Street stations, were recognized by Mr. Bion J. Arnold in his report upon the transportation problem in Los Angeles. The Commission's engineers appear to be of the opinion that the construction of a north and south subway on Main Street is of greater urgency than an east and west subway. This view is endorsed by the engineering conference. It is apparent, however, that the building of any subway is not an immediate practical possibility and it is urged upon the Commission (and there seems to be no disagreement with that proposition) that the most pressing Pacific Electric traffic problems cannot find their solution in the immediate construction of subways in the heart of the city and that means must be found to take care of the traffic congestion on Hill Street and on the Hollywood line. The Commission is at this time engaged in a study of the specific Pacific Electric traffic and operating problem, and it may be expected that a more detailed analysis of the matters here discussed will be made in connection with that investigation. We believe, therefore, that a definite order requiring operating changes or new construction from the Pacific Electric, or permitting that company to make material changes, should not be made in this decision.

(e) *Cost Estimates.*

Cost estimates in considerable detail are included in Commission's Exhibit No. 1. These estimates in that exhibit are of the years 1916 to 1918. The results were objected to by the railroads as not reflecting actual conditions at the time of the later hearings in these pro-

ceedings and the Commission asked the engineering conference to check and criticize the estimates and to revise the cost to a later date. This was done and in Commission's Exhibit No. 2 (Report of Engineering Conference, dated August 13, 1920) the estimated costs are as of March, 1920. As might be expected, there is not, however, agreement on estimates of cost of the various plans proposed in Commission's Exhibit No. 1 and their modifications.

The further fact should not be lost sight of that important changes in labor and material costs have occurred since March, 1920, and further important changes may confidently be expected in the future. On the whole, it may be said that the 1916 to 1918 costs were abnormally high and that the engineering conference costs, as of March, 1920, represented the approximate peak. Since then, and speaking generally, the estimate totals for the work contemplated in Commission's Exhibit No. 1 and 2 will have shown a decline. There is also objection on the part of the Commission's engineers to certain overhead cost estimates and to certain real estate valuations as used by the engineering conference.

In order to comprehend the items included in the general plan discussed in this proceeding and proposed in Commission's Exhibit No. 1, a comparison of the estimates as made by the Commission's engineers, on the basis of prices of 1916 to 1918, and as revised by the engineering conference on the basis of prices of March, 1920, is shown in the following Table No. I. It should be remembered that Table I provides for what is termed

the "ultimate plan". The table is included in this decision, not for the purpose of showing what would appear to the Commission to be estimates of sufficient exactness to base thereon a division of cost but merely to give an indication of the scope of the proposed development.

The construction contemplated in Table I will be spread over a period of probably not less than ten years and the work will of necessity have to be done in successive steps. The first step provided for in this order, and extending over a period of probably five years, embraces, it will be noted, a beginning of the most important grade crossing separations, a beginning in the establishment of a union passenger terminal with the accompanying relief of Alameda Street, and certain other measures making for greater simplicity and economy in railroad operation. The cost of this first step will, of course, be much less than the total estimate. The approximate cost figure will be known after the plans of the engineering committee have been filed with the Commission.

It must be remembered that the present passenger stations of the Salt Lake and of the Santa Fe are acknowledged by these roads to be inadequate and unsatisfactory and, further, that large expenditures are necessary and now contemplated by the three steam railroads and by the Pacific Electric in meeting their urgent passenger and freight requirements. The Southern Pacific-Salt Lake-Pacific Electric plan, according to Southern Pacific-Salt Lake Exhibit No. 27, contemplates the expenditure of approximately seventeen mil-

Trestle Bridge St. Alameda St. to River	20,116	210,227	5,715	5,715	5,000	5,115	[illegible]
New Connection Alameda to Rubio Sta.	28,312	36,087	18,606	18,606	9,457	17,231	87,778
Double Track Rubio Subway	97,949	98,082					97,949
Total	147,777	344,396	24,320	24,320	14,457	22,346	185,877
10 New Crossings River to Hobart & Connections							
New Bridge and Wye East of River	369,218	421,139	49,406	49,406	3,801	6,379	382,194
Con. Track No. of Present S.Pe Main Line	31,510	31,319					31,510
Connection at Hobart, S.Pe and S.P.	43,668	56,668	6,510	6,510			47,510
Total	443,396	509,126	55,916	55,916	3,801	6,379	461,214
11 New Freight Tracks, S.P. and S.Pe							
New S.P. Tracks, San Fernando Road	1,678,197	4,096,617					1,678,197
New S.Pe Tracks, East of Hobart	957,020	1,398,776					957,020
Total	2,635,217	5,495,393					2,635,217
12 New Freight Terminal S.P. Highlee							
13 New Connections Relief Alameda St. Switching	4,484	6,012					4,484
14 Team Tracks							
New Yard S.P. Cleveland Rumor St.	296,897	460,096	+ 91,481	+ 91,481			204,686
New Yard L.A. Central Property	178,684	321,926					178,684
New Yard S.P. Freight Station Site	89,146	220,507			99,116	178,767	169,171
Total	564,727	992,529	+ 91,481	+ 91,481	99,116	178,767	552,541
16 Release S.P. Station Site	+ 98,000	+196,448	+1,719,918	+1,719,918	978,196	1,066,196	+ 1,846,654
17 Release S.P. Coach Yard Site	+ 48,784	+ 97,784	+1,683,252	+1,683,252	193,946	257,928	+ 1,976,252
Electric Roads							
20 New Line P.E. Station to Brooklyn Ave.-14th St.							
Removal & Reconstruction P.E.-14th & 1st Sts.	89,074	89,870					89,074
16th St. Subway	3,797,251	6,288,782	97,488	97,488	26,160	47,664	3,868,734
Double Tr. P.E. Elevated	1,081,114	1,726,819	482,088	482,088	97,456	178,947	1,677,089
Total	4,967,439	8,105,471	579,576	579,576	123,616	226,611	5,634,897
21 New Surface Lines to proposed Union Sta. Highlee							
22 Freight Tracks							
Macy St. and River to Redondo Yard	110,146	171,911	21,246	21,246			141,892
Relay Spangler Tract-Santa Fe & Rubio St	8,694	69,988					8,694
Total	118,840	241,899	21,246	21,246			150,586
GRAND TOTAL	21,178,214	39457983	1,291,492	1,291,492	2,276,811	6,280,680	868,816 1,812,181 23,896,635 46,[illegible]

Credits (1) Est. Com. • Estimate Committee of Engineering Conference.

The difference between the grand total "ultimate expenditure for all recommendations" of $[illegible],223,648.00, mentioned on page 14 of this document and the grand total of $25,290,635.00 given in this table, is accounted for by the exclusion from Table I of two items:

1. Reconstruction, joint use, and grade separating elimination of Rubio Pe and Salt Lake lines between Los Angeles and Colton;
2. Tearing of Southern Pacific-Salt Lake tracks between Los Angeles and Colton.

lion dollars for a partial and incomplete development. It cannot be said, in view of these facts, that an unreasonably large immediate expenditure is contemplated by the Commission or that we are not giving consideration to the important factor of cost in making this order.

Care must be taken in making comparison between different plans and estimates that the comparison is not between altogether unlike things. This difficulty repeatedly arose during these proceedings. The estimated cost of a partial plan manifestly cannot fairly be compared with the estimated cost of a comprehensive plan. Again, the cost of a plan to take care of present needs only cannot fairly be compared with the cost of a plan intended to provide for the present as well as the future. Again, a plan considering the requirements of several of the carriers only cannot be compared with a program designed to take care of all of the carriers as well as of the city.

When capital costs are compared, it is also necessary not to lose sight of comparative operating costs, and of operating costs not only to the railroads, but also to the users of transportation in passenger and freight traffic, and to the community.

We repeat, therefore, that it is not practicable, at this time, to deal extensively with the matter of cost and division of expenditure and that this is one of the features that should be reserved for a subsequent decision.

(f) *Associated Matters.*

The present decision will dispose of *Case 938* where, in Decision No. 3290, dated April 27, 1916, the Commission made its order directing the *installation of a standard interlocking plant at Aliso Street and Los Angeles River.* According to that order plans were to be submitted and the plant placed in operation within nine months. On July 28, 1916, the effective date of Decision No. 3290 was extended and the matter has since been held in abeyance. A separation of grades for the crossings of the Pacific Electric and the main line of the Salt Lake and the river tracks of the Santa Fe, and the removal of the crossing of the present main line Santa Fe tracks, does away with the necessity for this interlocking plant and this case may, therefore, be dismissed. An order will be issued by the Commission to that effect.

In *Application 2962*, the *Industrial Terminal Railway Company* asks permission to issue stock for the purpose of acquisition of rights of way for a *switching and terminal railroad* approximately two miles in length, commencing on Alameda Street north of Aliso Street and running in an easterly and northwesterly direction across Ramirez Street, Macy Street, Lyon Street and crossing the tracks of the Santa Fe, across the Los Angeles River and across the tracks of the Salt Lake, terminating on the south side of Alhambra Avenue east of the Los Angeles River. The present decision makes the construction of such a railroad an impossibility and we believe that this application should, for that reason,

be dismissed without prejudice. It is our understanding that such a dismissal is satisfactory to the applicants.

In *Case 974, the City of Pasadena is complainant* and the *Pacific Electric Railway Company*, the *Southern Pacific Company*, *Atchison, Topeka and Santa Fe Railway Company*, the *San Pedro, Los Angeles and Salt Lake Railroad Company*, and the *City of Los Angeles* are *defendants*.

In this complaint the City of Pasadena alleges that certain *grade crossings* maintained by defendants are dangerous and should be eliminated and asks further that the Commission's order in Case 938 should not be carried out.

The first is the crossing of *Huntington Drive* and the Pacific Electric, about one-third mile northeast of North Broadway and Mission Road Junction in the City of Los Angeles, where four Pacific Electric Railway tracks are crossed at grade. In the complaint, and in Exhibit "B" attached to the complaint, this crossing is referred to as the Mission Road crossing but since in Commission's Exhibit No. 1 the crossing of the Southern Pacific tracks in Alhambra Avenue with Mission Road is referred to as the Mission Road crossing, the crossing complained of in this case will be referred to as the Huntington Drive crossing. It should be here noted that the Pacific Electric Railway Company and the City of Los Angeles are the only defendants having an interest in this crossing.

As noted in Commission's Exhibit No. 1, subsequent to the filing of this formal complaint, an agreement was reached between the City of Los Angeles and the Pa-

cific Electric Railway whereby, through the construction of a new road and the relocation of a bridge, approximately all of the present traffic over this crossing would be diverted. It was proposed, therefore, that this crossing be excluded from the general investigation. This was done (trans. p. 132).

On August 7, 1917, the agreement referred to was filed with the Commission, it becoming City of Los Angeles Exhibit No. 2 in the consolidated proceeding. No grade crossings are to be opened or closed under this agreement and the Commission is not legally concerned. We may, however, take cognizance of the fact that the agreement has been carried out and the road constructed and approximately all of the traffic diverted from the crossing. No reason exists, therefore, for further consideration of this part of the complaint of the City of Pasadena.

The City of Pasadena also alleges that the grade crossings of the Pacific Electric tracks in Aliso Street and the Santa Fe and Salt Lake tracks on both sides of the Los Angeles River are improper, inadequate and insufficient for the reasonable protection of the public travelling on the Pacific Electric cars and asks that these crossings be eliminated. The complaint further alleges that the order made by the Commission on April 27, 1916, in Case 928 for the construction of a standard interlocking plant at this crossing should not be enforced for the reason that its installation would not obviate the alleged delay at this crossing.

On July 28, 1916, thirteen days subsequent to the filing of the complaint in Case 974, the Commission made a

decision extending until further order, the effective date of its order in Case 938 and the matter has since been held in abeyance pending a decision in this proceeding.

We have already stated that an order will be issued separating the grades of the Pacific Electric and the Santa Fe and Salt Lake at Aliso Street and Los Angeles River and if this is done it will automatically dispose of this part of the complaint in Case 974. Since all of the matters complained of by the City of Pasadena have been disposed of an order of dismissal without prejudice should be entered in Case 974. This will be done.

In *Case 980, the City of Alhambra, in Case 981, the City of San Gabriel and, in Case 983, the City of South Pasadena make complaints almost identical with that of the City of Pasadena in Case 974.*

For the reasons set forth above, these complaints should also be dismissed.

Summary.

The conclusions reached by the Commission, after a thorough and careful investigation as indicated in this opinion may be summarized as follows:

1. Consideration of safety, public necessity and convenience, as also of operating economy and efficiency, requires the adoption of a comprehensive plan of transportation development in the territory under consideration in this proceeding, including in such a plan provision for gradual elimination of all important grade crossings on the Southern Pacific, Santa Fe, Salt Lake, and Pacific Electric, a unification of the steam railroad passenger facilities, and the construction of a union passenger station, the further development of freight facili-

ties in accordance with principles insuring the lowest cost of service to both railroads and shippers, and the development of electric interurban rapid transit doing away with present congestion and delay and through means of probable future subways in the congested portion of the city. The conclusions reached and the general recommendations made in Commission's Exhibits Nos. 1 and 2 in this proceeding may well serve as a guide to such development.

2. The general ultimate development plan, to the extent that it is advisable and possible to lay down specifications at this time, is indicated in its construction items in Table I in this opinion. This plan, of necessity, will be subject to modifications depending on changes of present conditions.

3. The accomplishment of the plan will have to be undertaken in successive steps, the character and extent of each step to be determined by the transportation needs of the community and the carriers, and by the financial condition of the parties.

4. The first step is indicated in this decision and it is estimated that the work contemplated can be completed in five years.

5. The first construction and other work to be undertaken towards the accomplishment of the first step should be as follows:

(a) Grades should be separated at Macy, Aliso and Seventh Streets for reasons indicated and in the manner previously prescribed in this decision.

(b) Relating to freight traffic, the interests of the city and of industrial development require the withholding by the city authorities of future permits for industrial tracks longitudinally in streets; the confining of longitudinal tracks now in the streets to industrial use only and the removal of such tracks as soon as access to the industries served can other-

wise be obtained. All spur tracks should be served from the main lines on the river banks and future spur tracks should be built in a general easterly and westerly direction from the river and not across east and west streets, unless by such construction the crossing of more important north and south streets is avoided. The establishment of team yards along the east side of Alameda Street is desirable in the interests of both shippers and the railroads.

(c) A union passenger station should be established and built at the Plaza site, as that site and the requirements for such a station are previously described in this decision. The construction of a union passenger depot, with its necessary facilities and the resulting changes in the Los Angeles transportation system will, in itself, because of railroad operating and other necessities, be an item of work that must be completed in successive steps and spread over a considerable period of time. Arrangements to that end will have to be worked out by a competent engineering committee representing all the parties, under the chairmanship of a competent, impartial engineer, and under rules and instructions approved or laid down by this Commission.

6. With reference to the Pacific Electric interurban and local service, definite findings of fact relating to the first step in the ultimate plan, insofar as that company is a party to these proceedings, should be held in abeyance until the investigation now being made by the Commission into the affairs of that company is completed. It is a fact, however, that the Pacific Electric's most urgent service and traffic problems dealing with the Hill Street and the Hollywood situations are not affected by the present proceeding, and nothing contained in this decision will prevent or need delay a partial or complete solution of these difficulties.

7. Both the Pacific Electric and the Los Angeles Railway will have to make provision for adequate

local street railway service to and from the union passenger station.

8. Other matters at issue in this proceeding will be decided in accordance with the foregoing findings of fact and opinion.

ORDER.

Complaints having been filed by the Municipal League, Central Development Association, Civic Center Association, and the cities of Pasadena, Alhambra, San Gabriel and South Pasadena, and an application filed by Southern Pacific Railroad Company, et al., and all of these complaints and said application having been consolidated in this proceeding, and an exhaustive investigation into all of the matters connected therewith having been made by the Commission, public hearings having been held and the matters submitted, the Commission now makes its findings of fact as follows:

1. That the existing grade crossings of the Southern Pacific Company's tracks on Alameda Street, at College Street, North Main Street, Macy Street, Aliso Street, Commercial Street, Jackson Street, East First Street, East Second Street, East Third Street, East Fourth Street, East Sixth Street, Industrial Street, East Seventh Street, East Eighth Street, East Ninth Street, East Fourteenth Street and East Fifteenth Street, in the City of Los Angeles, are unsafe, and the continued use thereof, as a main line for the movement of trains of the said carrier, endangers the employes of the carrier and the public generally; that public interest and safety require that such dangerous conditions at said crossings be eliminated by the erection and use of a new structure or structures, to-wit, a union passenger

station and buildings incidental thereto located as hereinafter designated, and by the making of additions to, extensions, improvements and changes in the existing railroad facilities of said Southern Pacific Company reasonably necessary and incidental to the use of said union passenger station.

2. That a new structure or structures, to-wit, a union passenger station and buildings incidental thereto should be erected by the defendants, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, the Los Angeles and Salt Lake Railroad Company and Pacific Electric Railway Company, to promote the security and convenience of their employes and of the public and to secure adequate service and facilities for the performance of said defendants, and each of them of their public utility functions in the State of California; and in connection therewith additions, extensions, improvements and changes in the existing facilities of said defendants ought reasonably to be made in accordance with the general recommendations and conclusions set forth in the foregoing opinion.

3. That the location and site of the union passenger station herein referred to best suited to promote public convenience and to secure adequate service and facilities, is within that portion of the City of Los Angeles bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue and the Los Angeles River.

4. That certain existing grade crossings adjacent to the Los Angeles River in the City of Los Angeles, to-

wit, the crossing of Macy Street, a public street in the City of Los Angeles, and of the tracks of the Los Angeles Railway Corporation thereon by the tracks of The Atchison, Topeka and Santa Fe Railway Company and of the Los Angeles and Salt Lake Railroad Company; the crossing of Aliso Street, a public street in the City of Los Angeles and of the tracks of the Pacific Electric Railway Company thereon, by the tracks of The Atchison, Topeka and Santa Fe Railway Company and of the Los Angeles and Salt Lake Railroad Company, and the crossing of Seventh Street, a public street in the City of Los Angeles, and of the tracks of the Los Angeles Railway Corporation thereon, by the tracks of The Atchison, Topeka and Santa Fe Railway Company, and of the Los Angeles and Salt Lake Railroad Company are unsafe, and the continued use thereof endangers the employes of said carriers and the public generally; that a separation of grades at said crossings is practicable and should be made.

Basing its order upon said findings of fact and the further findings and statements of fact contained in the opinion preceding this order,—

IT IS HEREBY ORDERED:

1. That said defendants, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, Los Angeles and Salt Lake Railroad Company and Pacific Electric Railway Company, do make and construct such additions, extensions, improvements to, and changes in, their railroad facilities in the City of Los Angeles, and do erect a union passenger station and buildings incidental thereto in said City of Los Angeles; and

perform such work and make and construct the necessary fills, cuts, viaducts and other works and structures necessary for a separation of grades at the crossings enumerated in paragraph 4 of the findings of fact preceding this order, all in the manner and within the time hereinafter specified in this order, and such other orders as this Commission may hereafter make, supplementary thereto.

2. The site of the union passenger station herein referred to shall be within that portion of the City of Los Angeles bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue and the Los Angeles River. The specific location of said station within said area will be hereafter fixed and designated, pursuant to final plans to be prepared therefor, as hereinafter provided.

3. That said defendants, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, Los Angeles and Salt Lake Railroad Company and Pacific Electric Railway Company, and each of them, shall cause to be made and filed with this Commission complete plans, specifications and estimates for such additions, extensions, improvements and changes in facilities and such new structure or structures, separation of grades and other work, as hereinabove referred to, as follows:

(a) *Relating to grade crossing elimination:* There shall be filed within sixty days from the date of this order a general plan or plans providing for grade separations at Macy, Aliso and Seventh streets, in conformity with the specifications, contained in the preceding opinion; also, profile or

profiles, and detail drawings of each viaduct provided herein, together with estimate of cost of construction for each viaduct and for incidental expenditures and for damages; such plans, profiles, drawings and estimates to be prepared as hereinafter provided for.

(b) *Relating to a union passenger station:* There shall be filed within six months from the date of this order a general plan, or plans, with the necessary profile, or profiles, and general and detail drawings of a passenger union station located on the Plaza site, as described in the preceding opinion and findings of fact, together with all necessary facilities and changes in existing facilities; also, estimates of cost of construction of the union passenger depot, together with its necessary facilities and changes in existing facilities, and estimates of damages and of salvage; also, description and plans of the necessary temporary operating arrangements during the period of the transition pending the completion of new union passenger terminal facilities. All plans, profiles, drawings and estimates shall be prepared as hereinafter provided for.

The filing by said defendants jointly of such complete plans, specifications and estimates shall be deemed a compliance with this order in this particular.

4. Said defendants, and each of them, shall, within thirty (30) days from the date of this order, appoint their respective representatives—of whom there shall not be more than two (2) for each defendant—upon a joint engineering committee, which committee shall be charged with the preparation of complete plans, specifications and estimates, hereinbefore referred to. Said defendants shall also, within thirty (30) days from the date of this order, select and, subject to the approval of this Commission, appoint a disinterested

engineer as chairman of said engineering committee. If no such appointment be made within the time specified herein, the Commission will, itself, select and appoint the chairman of the engineering committee. The City of Los Angeles shall be entitled to be represented upon the said engineering committee in the same manner and upon the same terms and conditions as each of said defendants.

5. The engineering committee shall prepare all plans, specifications, profiles, designs and estimates in accordance with the provisions laid down in this decision, and with such further directions as may be issued from time to time by this Commission. In case of any disagreement by said committee on any matter properly before it, the decision of the chairman thereon shall be final; subject, however, to the ultimate approval of the Commission. Each party shall have the right to present to the Commission its individual views when the plans and estimates are submitted to the Commission for final approval.

6. The expense of all additions, extensions, improvements or changes in facilities and new structure or structures and other work herein ordered—other than that relating to the separation of grades, to be hereafter specifically provided for, but including the preparation of complete plans, specifications and estimates by the engineering committee—shall be at the joint cost of said defendants upon such terms, as to the apportionment and division, as they may, within a reasonable time agree upon, which time is hereby fixed at thirty (30) days from and after the date of this order for the

apportionment of cost of preparation of complete plans, specifications and estimates, and six (6) months from and after the date of this order for the apportionment of cost of all other work; and in the event of their failure to so agree, then upon such terms and in such proportions and in the manner in which the Commission may, after further hearing, fix by supplemental order; *provided*, however, that all compensation for any representatives of the City of Los Angeles on the engineering committee shall be paid by said city.

7. Within twenty (20) days from the effective date of this order, the railroads shall file with the Commission a preliminary estimate of cost of preparing plans, specifications and estimates. After the appointment of the engineering committee, that committee shall file with the Commission weekly reports, in the form prescribed by the Commission, showing the progress of the work and the character and distribution of the work done. The engineering committee shall also keep account of its expenditures and shall file monthly reports of all expenditures with the carriers and with this Commission.

IT IS FURTHER ORDERED, that the complaint of the City of Pasadena against the Pacific Electric Railway Company, the Southern Pacific Company, the Atchison, Topeka and Santa Fe Railway Company, the Los Angeles and Salt Lake Railroad Company, and the City of Los Angeles, Case 974, which case is consolidated with this proceeding, relating to the grade crossing of the Pacific Electric tracks and Huntington Drive and to the grade crossing of the Pacific Electric tracks in

Aliso Street and the Santa Fe and Salt Lake tracks on both sides of the Los Angeles River be, and the same hereby is dismissed without prejudice, for the reasons heretofore stated in this decision.

It is further ordered, that the complaints of the cities of Alhambra, San Gabriel and South Pasadena, in Cases 980, 981 and 983, all of which cases are consolidated with this proceeding and which complaints are identical with the complaint of the City of Pasadena in Case No. 974, hereinbefore referred to, be, and hereby are, dismissed for reasons controlling in Case No. 974, as hereinbefore indicated in this decision.

The effective date of this order is hereby fixed and designated as the twentieth day of May, 1921; and

It is hereby further ordered, that wherever in this order a time is fixed for the doing of any act or the compliance with any term or condition of this order, such time shall be computed from said effective date.

The Commission reserves the right to make such further order or orders in these proceedings and relating to the construction, operation, modification and abandonment of facilities, to costs and division of costs, and to all other matters relating thereto, as public safety, necessity and convenience may require, and as, in the opinion of the Commission, may be just and reasonable.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 26th day of April, 1921.

FRANK R. DEVLIN,
H. D. LOVELAND,
H. W. BRUNDIGE,
IRVING MARTIN,
CHESTER H. ROWELL,
Commissioners.

A true copy.

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Assistant Secretary
Railroad Commission
State of California.

Appendix "A"

Attached to Decision No. 8901

List of Exhibits in Case 970 et seq.

Filed by the *Business Stability Association*

Date Filed	Exhibit Number	Subject
8-22 & 23-17	1	Plaza Terminal Plan.

Filed by The *California Railroad Commission*

Date Filed	Exhibit Number	Subject
2-17-20	1	Railroad Grade Crossing and Terminal Investigation Repor' by Engineering Department, Richard Sachse.
8-16-20	2	Report of Engineering Conference on Los Angeles Grade Crossing and Terminal Investigation. August 13, 1920.

Filed by *Central Development Association*

Date Filed	Exhibit Number	Subject
6-24-17	1	Large Map of Plaza Plan.
"	2	" " " " "
6-26-17	3	Plan of Smaller Proposed Plaza Terminal.
8-22 & 23-17	4	Track layout of Proposed Plaza Terminal.
11-21-17	5	Arrangement of terminal tracks, Proposed Plaza Plan.

Filed by *Central Development Association* (Cont'd)

Date Filed	Exhibit Number	Subject
"	6	Profile of N. Main Street to W. bank of L. A. River.
"	7	Section through Plaza Terminal with double arch.
11-21-17	8	Section through Plaza Terminal with single arch.
"	9	Front elevation of Plaza Terminal.
"	10	Small map showing main tracks of 4 railroads and approaches.
"	11	Floor plan of Terminal.
"	12	Plan at Alameda Street level of Terminal.
"	13	Diagram showing routes on yellow car lines serving Plaza and 5th Street station without change of cars.
11-22-17	14	Tabulation. Cost of Plaza Project; Cost of SP-SL-PE Project and Unit prices.
12-11-17	15A	Sketch map of S. P. Station at Arcade Site.
"	15B	Sketch map of Salt Lake coach track.
"	15C	Sketch map of Santa Fe's coach track.
"	15D	Sketch map of Santa Fe station grounds.

Filed by *Central Development Association* (Cont'd)

Date Filed	Exhibit Number	Subject
"	15E	Sketch map of S. P. yards and shop grounds at Alhambra Street.
"	16	Cost Estimate of Proposed Plaza Terminal coach yards.
"	17	Detail of Hawgood's Cost Estimate shown in Exhibit No. 14.
"	18	Large map showing Storrow's revised terminal layout.
"	19	Map showing enlarged detail Plaza terminal layout.
12-12-17	20	Blue print showing plans for Plaza Station building, drawn by Curlett, to which blue print is attached memorandum of costs.

Filed by *City of Los Angeles*

Date Filed	Exhibit Number	Subject
6-26-17	1	Profile of Los Angeles River Bed.
"	2	Copy of Contract between City of L. A. and P. E. Ry. Co., covering new road to divert traffic from Huntington Drive Crossing of P. E.
"	3	Map showing trackage and industrial spurs

Filed by The *City Planning Association*

Date Filed	Exhibit Number	Subject
8-22 & 23-17	1	Diagram of Rapid Transit Lines—10-22-14.
"	2	Satellite Map—Los Angeles District.
"	3	Diagram of Interurban and Steam Railroads.
8-17-20	4	Diagram of transportation.

Filed by *Southern Pacific and Salt Lake Railroad Companies*

Date Filed	Exhibit Number	Subject
6-24-17	1	Map showing S. P.-S. L. Plan.
6-26-17	2	Profile of S. P.-S. L. Plan—Pigeon Farm to Hollenbeck Ave.
"	3	Profile of S. P.-S. L. Plan—L. A. River to Arcade Depot.
"	4	Large map of Proposed S. P.-S. L. Passenger Terminal.
8-22 & 23-17	5	Map showing lands in Central Development Ass'n depot Plan.
"	6	Map showing Ownerships of Lands in Central Development Association's depot Plan.

Filed by *Southern Pacific and Salt Lake Railroad Companies* (Cont'd)

Date Filed	Exhibit Number	Subject
"	7	Sketch of Track layout in Central Development Ass'n depot Plan.
"	8	Plans of S. P. Arcade Station —"A" to "L" inclusive.
"	9	Plan of S. P. Trackage, Macy to 6th Streets.
"	10	Profile of North Main Street.
"	11	" " Macy Street.
"	12	" " Aliso Street.
"	13	" " Aliso and Anderson Streets.
"	13A	Profile of Aliso Street. M. W. 861.
"	14	Profile of Fourth Street.
"	15	" " Seventh Street.
"	16	" " Ninth Street.
8-22 & 23-17	17	"Official Transportation and City Map of Los Angeles".
"	18	Photograph of Proposed Grade Crossing Elimination at 6th and Alameda Streets.
11-20-17	19	Plan showing 7th Street Separation of Grades.

Filed by *Southern Pacific and Salt Lake Railroad Companies* (Cont'd)

Date Filed	Exhibit Number	Subject
11-21-17	20	Letter of C. W. Durbrow to President Thelen, dated November 16, 1917, with 4 enclosures headed respectively "Plaza Plan; Exchange of Passenger Facilities; New Money to be spent by Southern Pacific Company; and New Money to be spent by Pacific Electric Railway Company and Salt Lake Railroad".
11-21-17	21	Titcomb's detailed estimate of Southern Pacific-Salt Lake plans (29 sheets).
"	22	Titcomb's estimate of cost of Barnard plan.
11-22-17	23	Salt Lake Company's first mortgage dated July 1, 1911, to Guaranty Trust Company of New York.
12-11-17	24	Profile from near 6th Street to L. A. River.
"	25	Estimate details of Grade Separation at Los Angeles.
8-18-20	26	Map of Present S. P. Station.

Filed by *Southern Pacific and Salt Lake Railroad Companies* (Cont'd)

Date Filed	Exhibit Number	Subject
"	27	Comparative statement showing Cost of Complete Grade Crossing Elimination between S. P.-S. L. Plan and the Plaza Plan.
"	28	Estimate of Cost of Grade Crossing Elimination along banks of Los Angeles River.
"	29	Blue Print—Proposed joint use of S. P. Station by L. A. & S. L. Ry.
"	30	Chart showing train operation at present S. P. Station.
"	31	Joint passenger station (pamphlet).
"	32	S. P.-S. L.-P. E. plan for elimination of grade crossings.

EXCERPTS

AGREED UPON BY STIPULATION, FROM APPLICATIONS FOR REHEARING FILED WITH THE RAILROAD COMMISSION BY THE SOUTHERN PACIFIC COMPANY; ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY; AND THE LOS ANGELES AND SALT LAKE RAILROAD COMPANY ON MAY 10 AND 12, 1921, RESPECTIVELY.

Excerpts from Application of Southern Pacific Company for Rehearing filed with the Railroad Commission May 10, 1921.

X.

"That the Railroad Commission has no jurisdiction, authority or power to make an order requiring Southern Pacific Company and its co-defendants to erect said Union Passenger Station and buildings incidental thereto, and requiring the joint use thereof by these applicants, for the reason that the necessary effect of said order is to require the use of the terminal facilities owned by these applicants in the City of Los Angeles and used by them in the conduct of their interstate business by one or more of the other applicants herein, and would require the use of the main line track or tracks owned by these applicants for a reasonable distance outside of their terminal by one or more of the said other defendants. That at the time said decision was rendered and said order made the power and authority to so require the use of the terminal facilities of each of the said defendants including the main line track or tracks for a reasonable distance outside of its terminal, by any other carrier or carriers, was vested solely in the Interstate Commerce Commission by the

provisions of paragraphs 4 of Section 3 and by the provisions of paragraph 15 and subdivisions 18 to 22 inc. of Section 1 of the Interstate Commerce Act, as amended February 28, 1920; that for the reasons above stated the authority attempted to be exercised by the Railroad Commission of the State of California in the making and entering of said order in the respects referred to, is in contravention of and repugnant to the said Interstate Commerce Act in that the authority so attempted to be exercised invades the authority and jurisdiction of the Interstate Commerce Commission, and is in contravention of and repugnant to Section 8 of Article 1 of the Constitution of the United States in that authority is attempted to be exercised in the regulation of commerce among the several states.

XI.

"That said Decision and Order No. 8901 is unlawful and is against the law in this; that in and by said Decision and Order, and by the necessary force and effect thereof, the State of California, and the State of California by and through the California Railroad Commission is permitted to and does deprive these applicants of their property without due process of law, and denies to them and each of them the equal protection of the law by requiring the installation of large and expensive additions and betterments far beyond the financial ability of these applicants or their co-defendants to meet, and requires the procuring of funds for that purpose which cannot be procured except by the issuance of securities, the authority and supervision over which is conferred by the Statutes of the United

States upon the Interstate Commerce Commission, and particularly by Section 20A of the Interstate Commerce Act. The Interstate Commerce Commission has not authorized the issuance of such securities. The said order is therefore repugnant to the provisions of Section 9 of Article 1 of the Constitution of the United States, and of the laws of the United States. Said order requires the abandonment of adequate terminal facilities, concerning the adequacy of which there is no evidence to the effect that they are inadequate and not satisfactory to meet the public convenience and necessity for many years to come; and thereby said Order and Decision No. 8901 deprives these applicants of their property without due process of law, and appropriates the same for public use without compensation, and denies to them and each of them the equal protection of the laws, contrary to the force and effect of the Constitution of the State of California and of the United States of America.

XII.

"These applicants further specify and claim that said decision is unlawful in this: that by said Decision and Order No. 8901 the obligations of a contract made and entered into by and between the State of California and Southern Pacific Railroad Company, the predecessor in interest of applicant Southern Pacific Railroad Company the lessor of Southern Pacific Company, under and by virtue of the laws of the State of California, and the grant thereby made to said Southern Pacific Railroad Company, and the acceptance of said grant and right by the filing of its Articles of Incorporation and the con-

struction of its railroad commencing at the City and County of San Francisco and running thence to and through the City of Los Angeles to San Pedro, and from, in and through the City of Los Angeles to the Colorado River and to other places, cities and towns in the State of California, as shown by the evidence in this proceeding, are held, decided and adjudged to be impaired and abrogated, subsequent to the making of said contract in contravention of and repugnant to the provisions of Article 1, Section 10 of the Constitution of the United States, and Section 1 of the Fourteenth Amendment to the Constitution of the United States.

XIII.

"These applicants further specify and claim that said decision is unlawful in this, that by Decision and Order No. 8901 the obligations of a contract made and entered into by and between the City of Los Angeles, California, and Southern Pacific Railroad Company, the predecessor in interest of applicant, Southern Pacific Railroad Company, the lessor of Southern Pacific Company, under and by virtue of the laws of the State of California and the charter of the City of Los Angeles, and the grant thereby made to said Southern Pacific Railroad Company by the ordinance authorizing the construction and operation of its railroad in Alameda Street, and the acceptance of said grant and right by the construction and operation of its railroad commencing at the City and County of San Francisco and running thence to and through the City of Los Angeles to San Pedro, and from in and through the City of Los Angeles to the Colorado River and to other places,

cities and towns in the State of California, as shown by the evidence in this proceeding, are held, decided and adjudged to be impaired and abrogated, subsequent to the making of said contract, contrary to the provisions of Article I, Section 10 of the Constitution of the United States, and Section 1 of the Fourteenth Amendment to the Constitution of the United States.

"Wherefore these applicants respectfully pray that the Commission set aside its findings and decision and that a rehearing be had of the above entitled matter; that a time and place be appointed by the Commission for the hearing of this application, and that applicants be afforded an opportunity to present argument in support thereof; and that upon such rehearing the decision and order be amended to meet the objections above specified;

"That pending the final determination of this application said decision and order heretofore entered be suspended and stayed, and that applicants have such further and other relief as may be meet and proper."

Excerpts from Application of Atchison, Topeka & Santa Fe Railway Company for Rehearing filed with the Railroad Commission May 12, 1921.

"The Commission has no jurisdiction to make an order requiring this defendant, with other defendants, to erect such union passenger station and buildings incidental thereto and requiring the joint use thereof by the defendant, for the reason that the necessary force and effect of said order is to require the joint use of the terminal facilities owned by the several defendants in said City of Los Angeles and used by each of them in

the conduct of its business, by the owner and by one or more of the other defendants herein, and to require the joint use of main line track or tracks of each of the defendants for a reasonable distance outside of its terminal both by the owner and one or more of said other defendants; whereas at the time said decision was rendered and said order was made the power and authority so to require the use of terminal facilities, including main line track or tracks for a reasonable distance outside the terminal by any carrier or carriers other than the owner of such track or tracks, was vested solely in the Interstate Commerce Commission by the provisions of Paragraph 4 of Section 3 and Paragraph 15 of Section 1 of the Interstate Commerce Act as amended February 28, 1920, by the Act known as the Transportation Act of 1920.

"That for the reasons above stated the authority attempted to be exercised by the Commission in the making and entering of said order is in contravention of and repugnant to said Interstate Commerce Act and said Transportation Act in that authority so attempted to be exercised invades the authority and jurisdiction of the Interstate Commerce Commission and because the authority so attempted to be exercised is repugnant to Section 8 of Article I of the Constitution of the United States.

"This Commission has no jurisdiction or power to make an order in the respect mentioned because the force and effect thereof is to require expenditures by this defendant of great and unreasonable sums out of proportion to any benefits to be derived therefrom by this defendant or its passengers or the public generally

and because the necessary effect thereof is to require this defendant to expend sums which could only be secured by the issuance of securities, authority and supervision over the issuance whereof is vested in the Interstate Commerce Commission by the provisions of Section 20-A of the Interstate Commerce Act and by the provisions of said Transportation Act. That therefore the power attempted to be exercised by this commission in making said order is so far set forth in contravention of the said Interstate Commerce Act and said Transportation Act of Section 8 of Article I of the Constitution of the United States.

"That in so far as the Public Utilities Act of California purports to authorize this Commission to make such an order said act is invalid, because in contravention of said Interstate Commerce Act and Transportation Act and Section 8 of Article I of the Constitution of the United States."

Excerpts from Application of Los Angeles and Salt Lake Railroad Company for Rehearing filed with the Railroad Commission May 10, 1921.

"(2) That the Railroad Commission has no jurisdiction, authority or power to make an order requiring this defendant and its co-defendants to erect said union passenger station, and buildings incidental thereto, and requiring the joint use thereof by the defendants, for the reason that the necessary force and effect of said order is to require the joint use of the terminal facilities owned by each of the said defendants in the City of Los Angeles, and used by each in the conduct of its business, by the owner and one or more of the other

defendants herein, and to require the joint use of the main line track or tracks of each of said defendants, for a reasonable distance outside of its terminal, by the owner and one or more of the said other defendants; and at the time said decision was rendered and said order made the power and authority to so require the use of the terminal facilities of each of the said defendants, including the main line track or tracks for a reasonable distance outside of its terminal, by any other carrier or carriers, was vested solely in the Interstate Commerce Commission by the provisions of Paragraph 4 of Section 3 and by the provisions of Paragraphs 15 and 18 to 22, both inclusive, of Section 1 of the Interstate Commerce Act, as amended February 28, 1920. That for the reasons above stated the authority attempted to be exercised by the Railroad Commission of the State of California in the making and entering of said decision and order in the respects referred to is in contravention of and repugnant to the said Interstate Commerce Act in that the authority so attempted to be exercised invades the authority and jurisdiction of the Interstate Commerce Commission, and for the further reason that the authority so attempted to be exercised is in contravention of and repugnant to Section 8 of Article I of the Constitution of the United States in that it attempts to regulate commerce among the several states.

"(3) That the Railroad Commission has no jurisdiction, authority or power to make an order in the respects mentioned because the necessary force and effect thereof is to require expenditures by this defendant, and its co-defendants, of enormous and unreasonable sums out

of all proportion to any benefits to be derived therefrom by the defendants or by their passengers, or by the public generally, and because the necessary force and effect thereof is to require this defendant to expend funds which could only be secured by this defendant by the issuance of securities; and authority and supervision over the issuance of securities by this defendant is vested solely in the Interstate Commerce Commission by the provisions of Section 20a of the Interstate Commerce Act. The authority, therefore, attempted to be exercised by the Railroad Commission in the making of the said order in the respects referred to is in contravention of and repugnant to the said Interstate Commerce Act and to Section 8 of Article I of the Constitution of the United States, in that it attempts to invade the jurisdiction and authority of the Interstate Commerce Commission over such matters and attempts to regulate commerce among the several states.

"(4) That insofar as the 'Public Utilities Act' of the State of California purports to authorize the Railroad Commission of the State of California to make an order respecting the matters mentioned, the same is invalid for the reason that it is in contravention of and repugnant to the Interstate Commerce Act and to Section 8 of Article I of the Constitution of the United States, for the reasons hereinbefore set forth in subdivisions (2) and (3) of this paragraph."

Before the Railroad Commission of the State of California.

The Municipal League, Complainant, vs. Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and San Pedro, Los Angeles and Salt Lake Railroad Company, Defendants.	Case No. 970
Central Development Association of Los Angeles, Complainant, vs. Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and San Pedro, Los Angeles and Salt Lake Railroad Company, Defendants.	Case No. 971
Civic Center Association of Los Angeles, Complainant, vs. Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and San Pedro, Los Angeles and Salt Lake Railroad Company, Defendants.	Case No. 972

City of Pasadena (a municipal corporation),
Complainant,

vs.

Pacific Electric Railway Company, Southern Pacific Company, Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company and City of Los Angeles,
Defendants.

Case No. 974

City of Alhambra (a municipal corporation),
Complainant,

vs.

Pacific Electric Railway Company, Southern Pacific Company, Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company and City of Los Angeles,
Defendants.

Case No. 980

City of San Gabriel (a municipal corporation),
Complainant,

vs.

Pacific Electric Railway Company, Southern Pacific Company, Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company and City of Los Angeles,
Defendants.

Case No. 981

City of South Pasadena (a municipal corporation), Complainant, vs. Pacific Electric Railway Company, Southern Pacific Company, Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company and City of Los Angeles, Defendants.	Case No. 983
In the Matter of the Application of Southern Pacific Railroad Company, Southern Pacific Company and Los Angeles & Salt Lake Railroad Company for approval of agreement for joint terminal facilities in Los Angeles, Cal.	Application No. 3346

By the Commission:

ORDER GRANTING REHEARINGS.

Petitions for rehearing having been filed by all of the defendants in all of the above-entitled proceedings, arguments on said petitions for rehearing having been heard, and good cause appearing therefor,—

It is hereby ordered that rehearings in all of the above-entitled matters be, and the same hereby are granted.

It is further ordered that all of the above entitled matters be, and the same hereby are set down for hearing before the Commission en banc, on Monday, the 24th day of October, 1921, at 9:30 A. M., in the Court Room

of the Commission, 810 Pacific Finance Building, Los Angeles, California, for the purpose of taking a view of the premises by the Commission.

It is further ordered, that a copy of this order, together with notice of said hearing be served on all parties to the above-entitled proceedings at least ten days prior to the date of said hearing.

Dated at San Francisco, California, this 7th day of October, 1921.

H. D. LOVELAND,
(Seal) CHESTER H. ROWELL,
H. S. BENEDICT,
Commissioners.

(Endorsed): Filed, Railroad Commission, State of California, Oct. 7, 1921,

H. G. Mathewson,
Secretary No.

Decision No. 9838

Before the Railroad Commission of the State of California.

The Municipal League, Complainant, vs. Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and San Pedro, Los Angeles and Salt Lake Railroad Company, Defendants.	Case No. 970
Central Development Association of Los Angeles, Complainant, vs. Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and San Pedro, Los Angeles and Salt Lake Railroad Company, Defendants.	Case No. 971
Civic Center Association of Los Angeles, Complainant, vs. Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and San Pedro, Los Angeles and Salt Lake Railroad Company, Defendants.	Case No. 972

City of Pasadena (a municipal corporation),
Complainant,

vs.

Pacific Electric Railway Company, Southern Pacific Company, Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company and City of Los Angeles,
Defendants.

Case No. 974

City of Alhambra (a municipal corporation),
Complainant,

vs.

Pacific Electric Railway Company, Southern Pacific Company, Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company and City of Los Angeles,
Defendants.

Case No. 980

City of San Gabriel (a municipal corporation),
Complainant,

vs.

Pacific Electric Railway Company, Southern Pacific Company, Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company and City of Los Angeles,
Defendants.

Case No. 981

City of South Pasadena (a municipal corporation), Complainant, vs. Pacific Electric Railway Company, Southern Pacific Company, Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company and City of Los Angeles, Defendants.	Case No. 983
In the Matter of the Application of Southern Pacific Railroad Company, Southern Pacific Company and Los Angeles and Salt Lake Railroad Company for approval of agreement for joint terminal facilities in Los Angeles, Cal.	Application No. 3346

Gibbon & Shelton, for Municipal League of the City of Los Angeles, Central Development Association of Los Angeles and Civic Center Association of Los Angeles;

Marshall Stimson, for Central Development Association of Los Angeles and Municipal League of Los Angeles;

Seward A. Simons, for Central Development Association of Los Angeles;

Joseph Scott and Edward D. Lyman, for Los Angeles Chamber of Commerce;

John Munger and J. H. Howard, for City of Pasadena;

Albert Lee Stephens, Howard A. Robertson, Chas. S. Burnell, Jess E. Stephens and H. Z. Osborne, Jr., for City of Los Angeles; Max Thelen, special counsel;

T. D. McFadden, for City of San Gabriel;

William Hazlett, City Attorney, for City of South Pasadena;

A. S. Halsted, for Los Angeles & Salt Lake Railroad Company;

C. W. Durbrow and George D. Squires, for Southern Pacific Company;

E. W. Camp and U. T. Clotfelter, for The Atchison, Topeka and Santa Fe Railway Company;

Frank Karr and E. E. Morris, for Pacific Electric Railway;

R. A. Rowan, for Los Angeles Realty Board;

Fred P. Gregson, for Associated Jobbers of Los Angeles;

F. M. Hilton and G. M. Lorraine, for City of Alhambra;

Gibson, Dunn & Crutcher, for Los Angeles Railway;

W. H. Workman, Jr., for Los Angeles City and County Viaducts Association;

Will D. Gould, President, for Northwest Improvement Association;

Charles W. Lyon, for City of Santa Monica and City of Venice;

Herbert J. Goudge, for Business Men's Association of Los Angeles;

W. C. Shelton, for Business Men's Co-operative Association;

R. W. Kelly, for Brooklyn Avenue and Malabar Improvement Association;

Leonard B. Slosson, for Municipal League of the City of Los Angeles;

George A. Damon, for City Planning Association;

Gordon G. Dunlop, Chairman of Los Angeles Conference of City Planning;

J. G. Wingert, for City of Whittier;

B. E. Page, for Business Men's Stability Association.

By the Commission:

OPINION

Decision in the above-entitled proceedings, as consolidated at the original hearing, has been heretofore rendered (Decision No. 8901). Upon the filing by all of the defendants of petitions for rehearing, and after hearing and argument thereon, it became apparent that certain modifications of the original findings and order were necessary, and for that purpose a rehearing was granted.

In view of the exhaustive investigation that has been made and the full and complete presentation of evidence by all parties at the former hearings, and the further fact that the Commission has viewed the premises and is thoroughly familiar with the physical conditions, it is not considered necessary to reopen the case for the taking of further evidence. At the request of the Commission, there have been filed by all parties written stipulations that all the evidence and arguments taken at former hearings might be considered as the evidence and record on rehearing.

In the former opinion the facts relative to grade crossing elimination and the union passenger depot were thoroughly discussed and the reasons generally upon which the Commission based its findings were set forth. In addition to this it was deemed necessary, inasmuch as the various complainants and the City has asked the Commission to make a comprehensive investigation of the entire railroad situation in Los Angeles, to discuss all aspects of the transportation problem from the standpoint of both immediate and future needs

and to include some suggestions relative to future developments, which necessarily could not be included in the order. In view of the fact that the work done and the investigation made in this case may be the basis, in part at least, for supplemental orders that may be necessary to the carrying out of the general scheme of traffic reorganization in Los Angeles asked for by complainants, all that was said in the former opinion is now considered pertinent and of value herein and the same is therefore approved, except as herein modified.

It is only necessary here to consider the questions which were presented in the petitions and arguments for rehearing and in particular those which make a modification of the findings and order necessary.

1. *Pacific Electric.* It is complained that as to the Pacific Electric the order is unlawful in that it requires participation in the construction of a union station and in the separation of grades at Macy and Seventh streets, whereas the evidence shows that the Pacific Electric has no interest in a union station at all and maintains no tracks on the streets mentioned. A careful review of the record leads us to conclude that there was not sufficient evidence upon which to base the findings and order that the Pacific Electric should participate in the construction of a union terminal at the Plaza. The Pacific Electric will, therefore, be eliminated from that part of the order. As to grade crossings, it was, of course, not contemplated that the Pacific Electric should participate in any construction at crossing where it has no tracks; however, in order that there may be

no misunderstanding, the order will be modified in that particular and the Pacific Electric Company will be specifically required to participate in the separation of grade crossings at Aliso Street and the Los Angeles River, in accordance with the relief asked in cases 974, 980, 981 and 983. Inasmuch as the suspension of the original order automatically suspended the dismissal of these four cases and reinstated them, that part of the order dismissing these cases will be omitted from the present order, and the decision and order herein will be the decision and order in said four cases as consolidated in the entire proceeding.

2. *Grade Crossing Separation.* No special complaint was made in the petitions for rehearing or in the oral arguments thereon concerning that part of the order which required the separation of grade crossings. It was admitted by all parties that the grade crossings are dangerous, and that there is abundant evidence to show that public convenience and necessity require the elimination of all the grade crossings mentioned in the order. It was stated by counsel for the Southern Pacific Company, in argument upon rehearing, that "So far as the grade crossing elimination is concerned, we have from the very beginning been frank in stating that it was the desire of carriers to fully co-operate to the fullest extent in eliminating the condition which now exists." By the filing of Application No. 3346 three of the carriers, the Southern Pacific Company, Los Angeles and Salt Lake Railroad Company, and Pacific Electric Company, practically admitted that the only effective method of eliminating the grade crossing evil

from Alameda street is to remove all railroad traffic (except freight switching during limited hours) from that street. These carriers propose in this application to do this by making the present Southern Pacific station a partially unified terminal and bringing trains to it by means of a trestle direct from the Los Angeles River. The Commission found, and its finding was supported by abundant evidence, that this plan did not eliminate all the grade crossings, and that it only provided for a partial and unsatisfactory solution of the terminal question. The Commission was, however, also of the opinion that the only method of eliminating grade crossings from Alameda street is to remove all main line traffic therefrom, but found this can only be safely, effectively and satisfactorily accomplished by the construction of a depot at the Plaza. A review of the record convinces us that this finding is amply supported by evidence. The former findings and order as to grade crossings will, therefore, remain substantially unchanged.

3. *Union Terminal.* All the constitutional questions and the questions relating to jurisdiction that were urged by the carriers upon rehearing, relate to that part of the order requiring the construction of a union depot. Without going into an extended discussion of the questions involved, we may say that we are satisfied that the order does not amount to a taking of private property for public use without just compensation, nor does it take property without due process of law, or deny defendants equal protection of the law. We are also satisfied that the Commission has full jurisdiction

of the subject matter of the order and that its authority to make the order has not been taken away or impaired by Federal statutes.

It was urged by the carriers that the order requiring a union passenger depot at the Plaza is without support in the evidence and that the Commission disregarded the evidence of carriers and relied exclusively upon the report of the Commission's own engineer. The Commission has given this claim careful consideration. Five detailed plans for a union terminal were introduced in evidence by five different witnesses. They were the Hawgood plan, the Barnard plan, the Storrow plan, the Southern Pacific-Salt Lake plan and the Sachse plan. With the exception of the Southern Pacific-Salt Lake plan, all of these plans called for a union passenger depot at the Plaza, but differed as to the exact location of the depot and the arrangement of tracks, approaches, etc. In addition to these, the so-called Arnold report was introduced and there was much other evidence, all supporting the general proposition that a union depot at the Plaza was necessary. The Commission did not rely solely on the report of its own engineer, nor did it adopt the Sachse plan in all its particulars, but, in accordance with the overwhelming preponderance of the evidence, the Commission did order a union depot at the general site of the Plaza, and left the exact location of the depot, tracks, approaches, etc., to be determined by the carriers themselves, subject only to the final approval of the Commission.

That public convenience and necessity require the construction of a union depot at the Plaza is supported

by abundant evidence. The very first witness who took the stand, Mr. Storrow, began by stating that any comprehensive plan for the entire elimination of grade crossings involved the construction of a new union depot, and that such a plan for grade crossing elimination was not applicable to any location for a union depot except the Plaza. Much testimony was thereafter given, and much argument made to the effect that a complete and satisfactory solution of the grade crossing situation was dependent upon a union depot at the Plaza, and the Commission finds this to be the fact. That such a finding is amply supported by the evidence we entertain no doubt.

The evidence was equally clear as to the inadequacy of the present passenger depots of the carriers. The Los Angeles and Salt Lake Railroad Company's depot is admittedly inadequate. Built in 1891, at an estimated cost of $10,000, it is shamefully lacking in every particular necessary to satisfy the requirements of public convenience and necessity of a city of six hundred thousand people. The Santa Fe depot, built in 1893, at an estimated cost of $50,000, now "provides scant facilities for the use of passengers", and is also wholly inadequate for present and future needs. As to the Southern Pacific depot, its continued use does not conform to any satisfactory plan for the elimination of the grade crossings on Alameda Street. The imperative public necessity for the elimination of these grade crossings is a complete answer to the claim that the order requiring the abandonment of this depot amounts to a taking of property without compensation.

In arguments on rehearing, considerable stress was laid upon the alleged cost of a union passenger station at the Plaza. The matter of cost was thoroughly discussed in the former opinion; it only remains to add that a very large expenditure on the part of all the carriers will be immediately necessary, irrespective of what plan the Commission might adopt. Under the Southern Pacific and Salt Lake's own plan, approximately $17,000,000 would have to be expended. The Commission is convinced that the needs of the public will not be met by this plan, but believes, on the contrary, that public convenience and necessity require a complete and satisfactory solution of the grade crossing and terminal questions, and that, therefore, public convenience and necessity not only justify, but require the added expense necessary to such a solution.

Objection was made by the carriers to that portion of the order which requires the appointment of a representative committee to which is to be delegated authority to prepare plans. On further consideration, the Commission has determined to modify the order in this regard and the order will be made, directing the carriers themselves to prepare and submit plans and estimates of cost without the interposition of a representative committee.

No special reference was made in the former order to the part the City of Los Angeles should bear in the expense of eliminating the grade crossings along the Los Angeles River. It was, of course, understood by all parties that the city would pay a proportionate share of this expense. On further consideration the Commis-

sion has determined that the city should be specifically included in the order, and required to participate in the filing of the statement showing proportionate cost which each of the defendants and the city is to pay.

Considerable evidence was introduced by various parties concerning architectural beauty, improvement of real estate values, civic pride, and similar matters in connection with a union passenger station at the Plaza. The Commission desires to make it plain that no evidence of this character was considered of any importance in determining what the order should be, nor are any of these matters made the basis of the decision in this case. The decision and order herein are based upon the facts that the safety, comfort, convenience and necessity of the general public traveling across the grade crossings of the defendant carriers, also of the passengers and employees on the trains of said carriers, and also of the public utilizing passenger facilities in the City of Los Angeles, require the elimination of grade crossings and the construction of a union passenger depot, as directed in the following order.

Findings and Order.

Complaints having been filed by the Municipal League, Central Development Association, Civic Center Association, and the cities of Pasadena, Alhambra, San Gabriel and South Pasadena, and an application filed by the Southern Pacific Company and the Los Angeles & Salt Lake Railroad Company, and all of these complaints and said application having been consolidated in this proceeding, and an exhaustive investigation into

all of the matters connected therewith having been made by the Commission, public hearings having been held and the matters submitted for decision, the Commission now makes its findings of fact as follows:

1. That the existing grade crossings of the Southern Pacific Company's tracks on Alameda Street, at College Street, North Main Street, Macy Street, Aliso Street, Commercial Street, Jackson Street, East First Street, East Second Street, East Third Street, East Fourth Street, East Sixth Street, Industrial Street, East Seventh Street, East Eighth Street, East Ninth Street, East Fourteenth Street and East Fifteenth Street, in the City of Los Angeles, and certain existing grade crossings adjacent to the Los Angeles River in the City of Los Angeles, to-wit, the crossing of Macy Street by the tracks of The Atchison, Topeka and Santa Fe Railway Company and by the tracks of the Los Angeles and Salt Lake Railroad Company, the crossing of Aliso Street and of the tracks of the Pacific Electric Railway Company thereon by the tracks of The Atchison, Topeka and Santa Fe Railway Company and by the tracks of the Los Angeles and Salt Lake Railroad Company and the crossing of Seventh Street by the tracks of The Atchison, Topeka and Santa Fe Railway Company and by the tracks of the Los Angeles and Salt Lake Railroad Company are unsafe, and the continued use thereof for the movement of trains by the said respective carriers using such crossings endangers the employees of said carriers and the public generally; and that public interest, safety, convenience and necessity require that all such dangerous conditions at said crossings be eliminated.

2. That the existing passenger stations of The Atchison, Topeka and Santa Fe Railway Company at East Second Street and Santa Fe Avenue in the City of Los Angeles, and of the Los Angeles and Salt Lake Railroad Company at East First Street near the east bank of the Los Angeles River in the City of Los Angeles, are improper, inadequate and insufficient to promote the security, convenience and necessity of the public. That the existing depot of the Southern Pacific Company at Fifth and Alameda Streets in the City of Los Angeles does not conform to the plan for the elimination of said dangerous railroad grade crossings in the City of Los Angeles herein found to be required by public safety, convenience and necessity.

3. That in order to eliminate the dangerous grade crossings hereinabove enumerated and to provide adequate and sufficient passenger stations for the Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and Los Angeles and Salt Lake Railroad Company, in the City of Los Angeles, for the promotion of the security, convenience and necessity of their employees and that of the public generally, and to secure adequate service and facilities for the performance by the said defendants, and each of them, of their public utility functions in the State of California, it is necessary, and the public safety, convenience and necessity require that a new structure or structures, to-wit, a union passenger station and buildings incidental thereto, be erected by the defendants, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company, and in connection therewith such improve-

ments and changes in existing facilities of said defendants be made by said defendants as may be reasonably necessary and incidental to the use of said union passenger station, and that all railroad traffic be eliminated from Alameda Street, between College Street and Fifteenth Street, inclusive, in the City of Los Angeles, except local freight switching. That public safety, convenience and necessity require that a separation of grades be made by the defendants specified in the order herein at the said crossings adjacent to the Los Angeles River in the City of Los Angeles, to-wit, the crossing of Aliso Street and the tracks of the Pacific Electric Railway Company thereon by the tracks of The Atchison, Topeka and Santa Fe Railway Company and by the tracks of the Los Angeles and Salt Lake Railroad Company, the crossing of Macy Street by the tracks of The Atchison, Topeka and Santa Fe Railway Company and by the tracks of the Los Angeles and Salt Lake Railroad Company and the crossing of East Seventh Street by the tracks of The Atchison, Topeka and Santa Fe Railway Company and by the tracks of the Los Angeles and Salt Lake Railroad Company.

4. That public safety, convenience and necessity require that the location and the site of the union passenger station referred to in paragraph three of these findings be within that portion of the City of Los Angeles bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue and the Los Angeles River.

Basing its order upon said findings of fact and the further findings and statements of fact contained in the

original opinion in this case and the opinion preceding this order;

It is hereby ordered:

1. That the defendants, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company, and each of them, proceed to the procurement of sufficient grounds within the boundaries hereinafter set out, and proceed with the construction of an adequate union passenger station thereon and buildings incidental thereto in the City of Los Angeles, and to make such additions to, extensions of, improvements and changes in the existing railroad facilities of said companies as may be reasonably necessary and incidental to the use of said union passenger station.

2. That the site of the union passenger station referred to in paragraph one of this order shall be within that portion of the City of Los Angeles bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue and the Los Angeles River.

3. That said Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company, and each of them, within six (6) months from the effective date hereof, file with this Commission, for its approval, a general plan or plans, with the necessary profile or profiles, and general and detailed drawings, of a union passenger station located on said site, together with all additions to, extensions of, improvements and changes in existing railroad facilities as are reasonably necessary and incidental to the use of said union passenger

station; also estimates of cost of construction of said union passenger station, together with said necessary facilities and additions to, extensions of, improvements and changes in existing railroad facilities; also estimates of damages and of salvage; also description and plans of the necessary temporary operating arrangements during the period of the transition pending the completion of said new union passenger station.

4. That at the time of the filing of the plans referred to in paragraph three of this order, the said Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company, and each of them, shall file with this Commission a statement of the proportionate expense which each of said defendants is to bear for the procurement of said site and the construction of said union passenger station and said necessary facilities and changes, additions, extensions and improvements to existing facilities; and in the event said defendants shall fail to file said statement, showing the proportion of the expense which each of them is to bear, as herein required, this Commission will proceed to fix and apportion said expense to each of said defendants.

5. That upon the filing of the plans referred to in paragraph three of this order, this Commission will either approve said plans or require the same to be modified until they meet with its approval. Work upon the construction of said union passenger station shall commence within ninety (90) days after the approval by the Commission of said plans and shall be completed within three (3) years from that date, unless for good cause an extension of time is granted.

6. That defendant, The Atchison, Topeka and Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company, and each of them, shall proceed to the construction of such viaducts, work and structures as may be necessary to provide for a separation of the grades of the railway tracks of said defendants from the public streets at Macy and East Seventh Streets in the City of Los Angeles.

7. That said The Atchison, Topeka and Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company, and each of them, shall, within sixty (60) days from the effective date of this order, file with this Commission a general plan or plans providing for grade separations at said Macy and Seventh Streets; also, profile or profiles and detailed drawings of viaducts necessary for such grade separations, together with estimates of the cost of construction for each viaduct and for incidental expenditures and for damages.

8. That at the time of filing the plans referred to in paragraph seven of this order, the said The Atchison, Topeka and Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company, and each of them, and the City of Los Angeles shall file with this Commission a statement showing the proportionate expense which each of said defendants and said city is to bear for the construction of said viaducts and other necessary works for the separation of grade crossings. In the event said defendants and said city shall be unable to agree as to the proportionate expense to be borne by each for the viaducts and works necessary to the separation of said grades, the expense of such

structures and works shall be apportioned to each of said defendants and said city by this Commission.

9. That upon the filing of the plans referred to in paragraph seven of this order, this Commission will either approve said plans or require the same to be modified until they meet with its approval. Work upon said viaducts, structures and works for the separation of grades at said Macy Street and Seventh Street shall commence within thirty (30) days after the approval by the Commission of said plans, and shall be completed within two (2) years from that date, unless for good cause an extension of time is granted.

10. That defendants, The Atchison, Topeka and Santa Fe Railway Company, the Los Angeles and Salt Lake Railroad Company and the Pacific Electric Railway Company, and each of them, shall proceed to the construction of such viaducts, works and structures as may be necessary to provide for a separation of the grades of the railway tracks of said defendants from the public street at Aliso Street in the City of Los Angeles, and of the tracks of the Pacific Electric Railway Company from the tracks of said other defendants.

11. That said The Atchison, Topeka and Santa Fe Railway Company, the Los Angeles and Salt Lake Railroad Company and the Pacific Electric Railway Company, and each of them, shall, within sixty (60) days from the effective date of this order, file with this Commission a general plan or plans, providing for said grade separations at Aliso Street; also profile or profiles and detailed drawings of viaducts necessary for such grade separations, together with estimates of cost of construc-

tion for each viaduct and for incidental expenditures and for damages.

12. That at the time of filing the plans referred to in paragraph eleven of this order, the said The Atchison, Topeka and Santa Fe Railway Company, the Los Angeles and Salt Lake Railroad Company and the Pacific Electric Railway Company, and each of them, and the City of Los Angeles, shall file with this Commission a statement showing the proportionate expense which each of said defendants and said city is to bear for the construction of said viaducts and other necessary works for the separation of said grade crossings. In the event said defendants and said city shall be unable to agree as to the proportionate expense to be borne by each for the viaducts and works necessary to the separation of said grades, the expense of such structures and work shall be apportioned to each of said defendants and said city by this Commission.

13. That upon the filing of the plans referred to in paragraph eleven of this order, this Commission will either approve said plans or require the same to be modified until they meet with its approval. Work upon said necessary viaducts, structures and works for the separation of grades at said Aliso Street shall commence within thirty (30) days after the approval by the Commission of said plans and shall be completed within two (2) years from said date, unless for good cause an extension of time is granted.

14. That upon the completion of the union passenger terminal, as required by this order, the defendant, Southern Pacific Company, shall discontinue the opera-

tion of trains on Alameda Street, between College Street and Fifteenth Street, inclusive, in the City of Los Angeles, except for the purpose of local freight switching, which may be carried on during limited hours to be hereafter fixed by supplemental order.

It is hereby further ordered, that Application No. 3346 of the above-entitled proceedings, be, and the same is, hereby dismissed.

The effective date of this order is hereby fixed and designated as the third day of January, 1922.

Wherever in this order a time is fixed for the doing of any act or the compliance with any term or condition of the order, such time shall be computed from said date.

The Railroad Commission reserves the right to make such further order or orders in these proceedings relating to the construction, operation, modification and abandonment of facilities, to costs and division of costs, and to all other matters relating thereto, as may be determined by the Commission to be just and reasonable and as public safety, convenience and necessity may require.

Dated at San Francisco, California, this 6th day of December, 1921.

H. W. BRUNDIGE,
H. D. LOVELAND,
IRVING MARTIN,
CHESTER H. ROWELL,
H. S. BENEDICT,
Commissioners.

Certified as a True Copy.

(Seal) H. G. Mathewson,

Secretary Railroad Commission State of California.

EXCERPTS

AGREED UPON BY STIPULATION FROM APPLICATIONS FOR REHEARING FILED WITH THE RAILROAD COMMISSION BY THE SOUTHERN PACIFIC COMPANY; ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, AND THE LOS ANGELES AND SALT LAKE RAILROAD COMPANY ON DECEMBER 17 AND 19, 1921, RESPECTIVELY.

Excerpt from Application of Southern Pacific Company for Rehearing, filed with the Railroad Commission Dec. 17, 1921.

VI.

"That the Railroad Commission of the State of California has no jurisdiction, authority or power to make an order requiring applicant Southern Pacific Company and its co-defendants, or each or any of them, to proceed with the construction of a union passenger station or buildings incidental thereto, within that portion of the City of Los Angeles specified by said Commission in its said order, and to make such additions to, extensions of, improvements and changes in, the existing facilities of said applicant and its said co-defendants, as may be reasonably necessary or incidental to the use of said union passenger station, for the reason that the necessary effect of said order is to require the use of the terminal facilities owned by these applicants in the City of Los Angeles and used by them in the conduct of their interstate business, by one or more of the other applicants herein, and would require the use of the main line track or tracks owned by these applicants for a reasonable distance outside of their terminal by one or more of the other defendants, and would require

applicants and their co-defendants to make additions to, extensions of, improvements and changes in, their existing railroad facilities. That at the time said decision was rendered and said order made the power and authority to so require the use of the terminal facilities of each of the said defendants including the main line track or tracks for a reasonable distance outside of its terminal, by any other carrier or carriers, and to permit or require applicants to extend their lines of railroad, or to make additions to, extensions of, improvements and changes in, their existing railroad facilities, was vested solely in the Interstate Commerce Commission by the provisions of paragraph 4 of Section 3 and by the provisions of paragraphs 15, 18, 19, 20, 21 of Section 1 of the Interstate Commerce Act, as amended February 28, 1920; that for the reasons above stated the authority attempted to be exercised by the Railroad Commission of the State of California in the making and entering of said order in the respects referred to, is in contravention of and repugnant to the said Interstate Commerce Act in that the authority so attempted to be exercised invades the authority and jurisdiction of the Interstate Commerce Commission, and is in contravention of and repugnant to Section 8 of Article I of the Constitution of the United States in that authority is attempted to be exercised in the regulation of commerce among the several states.

VII.

"That said Decision and Order No. 9838 is unlawful and is against the law in this; that in and by said

Decision and Order, and by the necessary force and effect thereof, the State of California, and the State of California by and through the California Railroad Commission is permitted to and does deprive these applicants of their property without due process of law, and denies to them and each of them the equal protection of the law by requiring the installation of large and expensive additions, betterments and extensions, far beyond the financial ability of these applicants or their co-defendants to meet, and requires the procuring of funds for that purpose which cannot be procured except by the issuance of securities, the authority and supervision over which is conferred by the Statutes of the United States upon the Interstate Commerce Commission, and particularly by Section 20-A of the Interstate Commerce Act, and the said order is, therefore, repugnant to the provisions of Section 8 of Article I of the Constitution of the United States, and requires the abandonment of adequate terminal facilities, concerning the adequacy of which there is no evidence to the effect that they are inadequate and not satisfactory to meet the public convenience and necessity for many years to come; and thereby said Order and Decision No. 9838 deprives these applicants of their property without due process of law, and appropriates the same for public use without compensation and denies to them and each of them the equal protection of the laws, contrary to the force and effect of the Constitutions of the State of California and of the United States of America.

VIII.

"These applicants further specify and claim that said decision is unlawful in this; that by said Decision and Order No. 9838 the obligations of a contract made and entered into by and between the State of California and Southern Pacific Railroad Company, the predecessor in interest of applicant Southern Pacific Railroad Company, the lessor of Southern Pacific Company, under and by virture of the laws of the State of California, and the grant thereby made to said Southern Pacific Railroad Company, and the acceptance of said grant and right by the filing of its Articles of Incorporation and the construction of its railroad, commencing at the City and County of San Francisco and running thence to and through the City of Los Angeles to San Pedro, and from, in and through the City of Los Angeles to the Colorado River and to other places, cities and towns in the State of California, as shown by the evidence in this proceeding, are held, decided and adjudged to be impaired and abrogated, subsequent to the making of said contract, in contravention of and repugnant to the provisions of Article I, of Section 10 of the Constitution of the United States, and Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Excerpts from Application of Atchison, Topeka & Santa Fe Railway Company for Rehearing, filed with the Railroad Commission Dec. 19, 1921.

"That said decision and order are beyond the power and jurisdiction of the Commission and in contravention

and repugnant to Section 8 of Article I of the Constitution of the United States; and of Subdivision 15 of Section 1 of the Act of the Congress of the United States generally known as the Interstate Commerce Act approved February 4, 1887, as amended; and of Subdivisions 18 to 22 inclusive, of the same section; and of Subdivision 4 of Section 3 of said Act as amended; and of Subdivision 4 of Section 5 of said act as amended; and of Subdivisions 2 and 3 of Section 15-A of said act, as amended, which section was added to said act by the Transportation Act of 1920; and of Subdivision 2 of Section 20-A of said Interstate Commerce Act as amended, and particularly as amended by said Transportation Act.

"That said order is not supported by the evidence but is contrary thereto and the findings and conclusions of the Commission upon which said order is based are without foundation, contrary to law and void.

"That said order if it become effective will confiscate this defendant's property and deprive defendant of its property without due process of law and deny defendant the equal protection of the law contrary to the provisions of the 14th Amendment to the Constitution of the United States, and to paragraph 13 of Section 1 of the Constitution of the State of California.

"That the Commission has no jurisdiction to make an order requiring this defendant with the other defendants, to do the things in this paragraph specified, for the reason that the necessary force and effect of said order is to require the joint use of the terminal facilities owned by the several defendants in said City

of Los Angeles and used by each of them in the conduct of its business, by the owner and by one or more of the other defendants herein; and to require the joint use of main line track or tracks of each of the defendants for a distance outside of its terminal both by the owner and one or more of said other defendants; whereas at the time said decision was rendered and said order was made the power and authority so to require the use of terminal facilities, including main line track or tracks for a reasonable distance outside the terminal by any carrier or carriers other than the owner of such track or tracks, was vested solely in the Interstate Commerce Commission by the provisions of Paragraph 4 of Section 3 and Paragraph 15 of Section 1 of the Interstate Commerce Act as amended February 28, 1920, by the act known as the Transportation Act of 1920.

"That this Commission has no jurisdiction, authority or power to make an order requiring this defendant, and its said co-defendants, to do the things in this paragraph specified, for the reason that the necessary force and effect of said order is to require this defendant to undertake the extension of its line of railroad, and the construction of a new line of railroad and facilities, and the operation thereof and of said extensions, and to require the joint use of said extension and new line by this defendant and its said co-defendants, whereas at the time said decision was rendered and said order made no such extension of its line of railroad by this defendant, or the constr[illegible] of a new line of railroad could be undertaken [illegible]t,

unless and until there had been obtained from the Interstate Commerce Commission a certificate that the present or future public convenience and necessity required, or will require the construction and operation of such extension or said new line of railroad, in accordance with the provisions of paragraphs 18 to 22, both inclusive, of Section 1 of the Interstate Commerce Act as amended February 28, 1920, and no such certificate has been issued or granted by the said Interstate Commerce Commission; that for the reasons above stated the authority attempted to be exercised by this Commission in the making and entering of said order is in contravention of and repugnant to the said provisions of the Interstate Commerce Act in that the authority so attempted to be exercised invades the authority and jurisdiction of the Interstate Commerce Commission, and for the further reason that the authority so attempted to be exercised is in contravention of and repugnant to Section 8 of Article I of the Constitution of the United States in that it attempts to regulate commerce among the several states.

"That this Commission has no jurisdiction or power to make an order in the respect mentioned because the force and effect thereof is to require expenditures by this defendant of great and unreasonable sums out of proportion to any benefits to be derived therefrom by this defendant or its passengers or the public generally, and because the necessary effect thereof is to require this defendant to expend sums which could only be secured by the issuance of securities, authority and supervision over the issuance whereof is vested in the

Interstate Commerce Commission by the provisions of Section 20-A of the Interstate Commerce Act and by the provisions of said Transportation Act. That therefore the power attempted to be exercised by this Commission in making said order is in contravention of the said Interstate Commerce Act and said Transportation Act and of Section 8 of Article I of the Constitution of the United States.

"That in so far as the Public Utilities Act of California purports to authorize this Commission to make such an order, said act is invalid, because in contravention of said Interstate Commerce Act and Transportation Act and Section 8 of Article I of the Constitution of the United States."

Excerpt from Application of Los Angeles and Salt Lake Railroad Company for Rehearing filed with the Railroad Commission Dec. 19, 1921.

"That said decision and order are beyond the power and jurisdiction of the Commission, and in contravention and repugnant to Section 8 of Article I of the Constitution of the United States; and of subdivision 15 of Section 1 of the Act of the Congress of the United States generally known as the 'Interstate Commerce Act' approved February 4, 1887, as amended; and of Subdivisions 18 to 22, inclusive, of the same section; and of Subdivision 4 of Section 3 of said act as amended; and of Subdivision 4 of Section 5 of said act as amended; and of Subdivisions 2 and 3 of Section

15-A of said act, as amended, which section was added to said act by the Transportation Act of 1920; and of Subdivision 2 of Section 20-A of said Interstate Commerce Act as amended, and particularly as amended by said Transportation Act.

"That said order is not supported by the evidence but is contrary thereto and the findings and conclusions of the Commission upon which said order is based are without foundation, contrary to law, and void.

"That said order if it becomes effective will confiscate this defendant's property, and deprive defendant of its property without due process of law, and deny defendant the equal protection of the law contrary to the provisions of the 14th Amendment to the Constitution of the United States, and to paragraph 13 of Section 1 of the Constitution of the State of California.

"That the Commission has no jurisdiction to make an order requiring this defendant, with the said other defendants to do the things mentioned in this paragraph for the reason that the necessary force and effect of said order is to require the joint use of the terminal facilities owned by the several defendants in said City of Los Angeles, and used by each of them in the conduct of its business by the owner and by one or more of the other defendants herein, and to require the joint use of the main line track or tracks of each of the defendants for a reasonable distance outside of its terminal, both by the owner and one or more of said other defendants; whereas at the time decision was rendered and said order was made the power and authority so to require the use of terminal facilities, in-

cluding main line track or tracks for a reasonable distance outside the terminal by any carrier or carriers other than the owner of such terminal facilities and such track or tracks, was vested solely in the Interstate Commerce Commission by the provisions of Paragraph 4 of Section 3, and Paragraph 15 of Section 1, of the Interstate Commerce Act, as amended February 28, 1920, by that Act, known as the Transportation Act of 1920.

"That this Commission has no jurisdiction, authority or power to make an order requiring this defendant, and its said co-defendants, to do the things mentioned in this paragraph for the reason that the necessary force and effect of said order is to require this defendant to undertake the extension of its line of railroad and the construction of a new line of railroad and facilities, and the operation thereof and of said extensions, and to require the joint use of said extension and new line by this defendant and its said co-defendants, whereas at the time said decision was rendered, and said order made no such extension of its line of railroad by this defendant, or the construction of a new line of railroad could be undertaken by it, unless and until there had been obtained from the Interstate Commerce Commission a certificate that the present or future public convenience and necessity requires or will require the construction and operation of such extension or said new line of railroad, in accordance with the provisions of paragraphs 18 to 22, both inclusive, of Section 1 of the Interstate Commerce Act, as amended February 28, 1920, and no such certificate has been issued or granted by the said Interstate Commerce

Commission; that for the reasons above stated the authority attempted to be exercised by this Commission in the making and entering of said order is in contravention of and repugnant to the said provisions of the Interstate Commerce Act, in that the authority so attempted to be exercised invades the authority and jurisdiction of the Interstate Commerce Commission, and for the further reason that the authority so attempted to be exercised is in contravention of and repugnant to Section 8 of Article I of the Constitution of the United States in that it attempts to regulate commerce among the several states.

"That this Commission has no jurisdiction or power to make an order in the respect mentioned because the force and effect thereof is to require expenditures by this defendant of great and unreasonable sums out of proportion to any benefits to be derived therefrom by this defendant, or its passengers, or the public generally and because the necessary effect thereof is to require this defendant to expend sums which could only be secured by the issuance of securities, authority and supervision over the issuance whereof is vested in the Interstate Commerce Commission by the provisions of Section 20-A of the Interstate Commerce Act and by the provisions of said Transportation Act. That therefore the power attempted to be exercised by this Commission in making said order is in contravention of the said Interstate Commerce Act and said Transportation Act and of Section 8 of Article I of the Constitution of the United States.

"That this Commission has no jurisdiction or power to make an order requiring this defendant to join with

its said co-defendants in doing the things hereinbefore in this paragraph mentioned in order that the existing grade crossings of the Southern Pacific Company's tracks on Alameda Street at the points named in paragraph 1 on page 11 of said decision may be eliminated, or requiring this defendant to bear any part of the expense connected with the elimination of said grade crossings, for the reason that it appears from the evidence and record in these proceedings that none of this defendant's tracks are located on Alameda Street, and therefore the necessary force and effect of such order is to require this defendant to incur expense and make expenditures and do things without compensation for a co-defendant, and thereby to subject it to unnecessary expense and loss, and is to that extent depriving this defendant of its property without due process of law, and denies to this defendant the equal protection of the law, and is taking from this defendant its property for public use without compensation, contrary to the provisions of the Constitution of the State of California, and contrary to the provisions of the Fifth and Fourteenth Amendments to the Constitution of the United States.

"That insofar as the Public Utilities Act of California purports to authorize this Commission to make such an order, said act is invalid, because in contravention of said Interstate Commerce Act, and Transportation Act, and Section 8 of Article I of the Constitution of the United States."

DECISION No. 9935

Before the Railroad Commission of the State of California.

The Municipal League, Complainant, vs. Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and San Pedro, Los Angeles and Salt Lake Railroad Company, Defendants.	Case No. 970
Central Development Association of Los Angeles, Complainant, vs. Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and San Pedro, Los Angeles and Salt Lake Railroad Company, Defendants.	Case No. 971
Civic Center Association of Los Angeles, Complainant, vs. Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and San Pedro, Los Angeles and Salt Lake Railroad Company, Defendants.	Case No. 972

City of Pasadena (a municipal corporation),
Complainant,

vs.

Pacific Electric Railway Company, Southern Pacific Company, Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company and City of Los Angeles,
Defendants.

Case No. 974

City of Alhambra (a municipal corporation),
Complainant,

vs.

Pacific Electric Railway Company, Southern Pacific Company, Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company and City of Los Angeles,
Defendants.

Case No. 980

City of San Gabriel (a municipal corporation),
Complainant,

vs.

Pacific Electric Railway Company, Southern Pacific Company, Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company and City of Los Angeles,
Defendants.

Case No. 981

City of South Pasadena (a municipal corporation), Complainant, vs. Pacific Electric Railway Company, Southern Pacific Company, Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company and City of Los Angeles, Defendants.	Case No. 983
In the Matter of the Application of Southern Pacific Railroad Company, Southern Pacific Company and Los Angeles and Salt Lake Railroad Company for approval of agreement for joint terminal facilities in Los Angeles, California.	Application No. 3346

By the Commission:

ORDER

Denying Applications for Rehearing.

Southern Pacific Company and Southern Pacific Railroad Company, parties to the above entitled proceedings, having, on the 17th day of December, 1921, filed an application for rehearing in said proceedings; and Los Angeles and Salt Lake Railroad Company and Atchison, Topeka and Santa Fe Railway Company, parties to the above entitled proceedings, having, on the 19th day of December, 1921, filed applications for rehearing in said proceedings;

The Commission having given full and careful consideration to said applications, and it appearing to the

Commission that the matters referred to therein have been fully presented and considered in prior hearings in said proceedings, and the Commission being of the opinion that no good cause appears why a rehearing should be granted;

It is hereby ordered that the applications of Southern Pacific Company and Southern Pacific Railroad Company, Los Angeles and Salt Lake Railroad Company and Atchison, Topeka and Santa Fe Railway Company, and each thereof, for rehearing herein be, and the same are hereby denied.

Dated at San Francisco, California, this 28th day of December, 1921.

H. W. BRUNDIGE,
H. D. LOVELAND,
IRVING MARTIN,
H. STANLEY BENEDICT,
Commissioners.

Certified as a true copy.
(Seal)
H. G. Mathewson,
Secretary Railroad Commission State of California.

In the Supreme Court of the State of California.

Southern Pacific Company (a corporation), Southern Pacific Railroad Company (a corporation) Petitioners,

vs.

Railroad Commission of the State of California, and Harvey D. Loveland, Harley W. Brundige, Irving Martin, Chester H. Rowell and H. Stanley Benedict, members of and constituting said Railroad Commission, Respondents.

PETITION

FOR WRIT OF REVIEW.

To the Honorable Lucien Shaw, Chief Justice, and the Associate Justices of the Supreme Court of the State of California:

Your petitioners above named respectfully represent:

I.

That at all the times herein mentioned your petitioner, Southern Pacific Company, has been, and now is, a corporation created and existing under and by virtue of laws of the State of Kentucky; and that your petitioner, Southern Pacific Railroad Company, has been at all the times herein mentioned, and now is, a corporation incorporated and consolidated under the laws of the States of California, Arizona and New Mexico.

Southern Pacific Railroad Company is the owner of certain lines of steam railroads extending through the City of Los Angeles from its termini in the State of California through the States of Arizona and New Mexico to the Rio Grande River in the State of New Mexico, and that said lines of railroad so owned by Southern Pacific Railroad Company are leased to and operated by Southern Pacific Company as a common carrier for hire for the carriage of freight and passengers in intrastate commerce in the State of California and interstate and foreign commerce from and to and through points in the State of California, including the City of Los Angeles, in said State. Said lines of railroad form a component, integral and essential part of an interstate system of steam railroads connected one with the other acquired, owned and held by Southern Pacific Railroad Company, and maintained and operated by Southern Pacific Company, as a unit and as an interstate system for the transportation of freight and passengers in interstate and intrastate commerce within and through the States of Oregon, California, Nevada, Utah, Arizona and New Mexico, and are operated as a system for the transportation of freight and passengers in interstate commerce between and among said last mentioned States, said lines extending through the City of Los Angeles, State of California, and that said lines of railroad and said petitioners are, and each of them is, and have been, during all the times hereinafter mentioned subject to the jurisdiction of the Interstate Commerce Commission, in accordance with the provi-

sions of the Act to Regulate Commerce, approved February 4, 1887, and amendments thereto.

That Southern Pacific Railroad Company joins as a party in this petition with Southern Pacific Company because it is pecuniarily interested, and its property rights are affected by the decisions and orders made and entered by respondents as hereinafter alleged and because as owner of the terminal facilities at the City of Los Angeles operated by said Southern Pacific Company under said lease, as aforesaid, it will suffer detriment and irreparable damage and great financial loss in the event said decisions and orders are made effective.

That respondents, Harvey D. Loveland, Harley W. Brundige, Irving Martin, Chester H. Rowell and H. Stanley Benedict, are the duly appointed, qualified and acting members of the Railroad Commission of the State of California.

II.

That your petitioners hereby apply to the Supreme Court of the State of California for a writ of review for the purpose of having the lawfulness of certain orders and decisions of the Railroad Commission of the State of California inquired into and determined, the orders and decisions referred to being that certain order and decision issued by the Railroad Commission of the State of California under date of April 26, 1921, designated as Decision No. 8901, a copy of which order is hereto attached, marked Exhibit "A," and made a part hereof; and that certain order and decision issued by said Railroad Commission under date of December 6,

1921, designated as Decision No. 9838, a copy of which said order is hereto attached, marked Exhibit "C," and made a part hereof, in the consolidated cases entitled The Municipal League vs. Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and San Pedro, Los Angeles and Salt Lake Railroad Company, Case No. 970; Central Development Association of Los Angeles vs. Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and San Pedro, Los Angeles and Salt Lake Railroad Company, Case No. 971; Civic Center Association of Los Angeles vs. Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and San Pedro, Los Angeles and Salt Lake Railroad Company, Case No. 972; City of Pasadena vs. Pacific Electric Railway Company, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company and City of Los Angeles, Case No. 974; City of Alhambra vs. Pacific Electric Railway Company, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company and City of Los Angeles, Case No. 980; City of San Gabriel vs. Pacific Electric Railway Company, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, and City of Los Angeles, Case No. 981; City of South Pasadena vs. Pacific Electric Railway Company, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt

Lake Railroad Company, and City of Los Angeles, Case No. 983; and the Matter of the Application of Southern Pacific Railroad Company, Southern Pacific Company, and Los Angeles and Salt Lake Railroad Company for approval of agreement for joint terminal facilities in Los Angeles, California, Application No. 3346.

The issuance of said writ of review is hereby prayed for by your petitioners for the purpose of determining whether said Railroad Commission has regularly pursued its authority in the issuance of said orders and decisions, and whether said Railroad Commission is vested with power and authority to enter said orders and decisions, including the determination as to whether said orders and decisions violate any right of petitioners under the Constitution of the United States or the State of California.

III.

That on the 3rd day of July, 1916, complaints were filed with the said Railroad Commission by the Municipal League, Central Development Association, Civic Center Association of Los Angeles, praying for the elimination of certain railroad grade crossings within the City of Los Angeles; and the establishment of a union passenger station in said City; and thereafter complaints were filed by the City of Pasadena, City of Alhambra, City of San Gabriel and City of South Pasadena, praying for an order requiring carriers named to make certain changes specified in said complaints with reference to grade crossings, and praying an order of the Commission rescinding an order, previously en-

tered by the Commission, establishing an interlocking plant at Aliso Street and Los Angeles River.

Thereafter, to-wit, on November 22, 1917, Southern Pacific Company, Southern Pacific Railroad Company, and Los Angeles & Salt Lake Railroad Company filed an application with said Commission for an order approving an agreement executed by the said applicants under date of July 18, 1917, providing for the joint use and operation of the passenger station owned by Southern Pacific Railroad Company and operated by Southern Pacific Company in said City of Los Angeles, and providing for the joint use of tracks and terminal facilities of applicants, and providing for the elimination of grade crossings in said City of Los Angeles.

That thereafter said Railroad Commission ordered that the several cases hereinbefore specified in Paragraph II hereof be consolidated and said Railroad Commission on its own motion ordered a general investigation thereof to be made.

IV.

That thereafter, to-wit, on the 26th day of April, 1921, after public hearings, the Commission rendered its decision and order hereinabove referred to and hereto attached, marked Exhibit "A," and made a part hereof.

V.

That thereafter, to-wit, on the 10th day of May, 1921, and within the time provided by law, your petitioners filed with the said Railroad Commission a petition for

rehearing in said cases, a copy of which is hereto attached, marked Exhibit "B," and made a part hereof.

VI.

That thereafter a rehearing of the said decision and order theretofore rendered by said Commission was had and thereafter, to-wit, on the 6th day of December, 1921, said Commission rendered its opinion and order on said rehearing, designated as Decision No. 9838, a copy of which is attached hereto, marked Exhibit "C," and made a part hereof.

VII.

That thereafter, to-wit, on the 17th day of December, 1921, and within the time provided by law, your petitioners filed with said Railroad Commission a petition for rehearing in said cases, a copy of which is hereto attached, marked Exhibit "D," and made a part hereof.

That thereafter, to-wit, on the 28th day of December, 1921, a decision and order was rendered by said Commission in said cases, denying said petition for rehearing.

VIII.

That said order and decision of respondents so made on the 21st day of April, 1921, and said order and decision so made as aforesaid on the 6th day of December, 1921, were, and are, erroneous and contrary to law in the particulars and for the reasons and upon the grounds set forth in said applications of your petitioners for rehearing, all of which particulars, reasons, and grounds are hereby referred to and relied upon as set forth in

said Exhibits "B" and "D," the same as if they were here at large set forth.

IX.

That in making said decisions and orders respondents did not regularly pursue their authority and that said respondents have no jurisdiction, power, or authority to render said decisions and orders, and that respondents exceeded the power and authority vested in them by the provisions of the Public Utilities Act of the State of California in entering said decisions and orders.

That said decisions and orders are in contravention of and repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States in that said decisions and orders deny petitioners the equal protection of the laws and deprive petitioners of their property without due process of law for the reason that no evidence was introduced before said Commission to the effect that the passenger terminal facilities owned and operated by petitioners respectfully in said City of Los Angeles are inadequate to meet the public convenience and necessity and for the reason that the uncontradicted evidence introduced before the Commission showed that the passenger station and passenger facilities of these petitioners in said City of Los Angeles fully meet the requirements of the public and are adequate for that purpose; and further that the uncontradicted evidence introduced before said Commission shows that the present facilities and passenger station of petitioners are adequate to accommodate all passenger traffic of petitioners within said City of Los An-

geles and in addition thereto to accommodate all the passenger traffic of the other steam line carriers named in said decisions and orders, not only at the present time, but for at least a period of twenty years from the present time, and therefore public convenience, necessity and safety do not require these petitioners to abandon the passenger facilities owned and operated respectively by petitioners, and join the other carriers named in said decisions and orders in the expense of constructing a union passenger station and buildings incidental thereto at the site specified by said Commission in its said decisions and orders.

X.

That said decisions and orders are contrary to law and in contravention of and repugnant to the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States for the reason that in and by said decisions and orders, and in and by the necessary force and effect thereof, petitioners are required to share the use of the passenger terminal facilities owned and operated by petitioners respectively in said City of Los Angeles, together with their main line track or tracks for a reasonable distance beyond their said terminal, with other carriers named in said decisions and orders without compensation for the property owned, controlled and operated by petitioners so sought to be taken and appropriated and without compensation for the damages which petitioners will sustain to their remaining terminal facilities, property and business which will not be so taken and appropriated and which constitute a part of the property so taken and appropriated.

XI.

That said respondents have no power and authority to enter said decisions and orders and that said decisions and orders rendered and entered by said respondents are unlawful and not supported by the evidence for the reason that the evidence does not support or sustain the findings made by respondents that in order to eliminate any dangerous grade crossings specified in said decisions and orders, or to provide adequate or sufficient passenger station facilities in said City of Los Angeles for petitioners or for the Atchison, Topeka & Santa Fe Railway Company, or the Los Angeles & Salt Lake Railway Company, or for the promotion of the security, convenience or necessity of the employees of petitioners, or said other roads, or that of the public generally, or to secure adequate service or facilities for the prompt performance by petitioners and said other roads, or any or each of them, of their public utility functions in the State of California, that it is at all necessary, or that the public convenience and necessity require that any new structure or structures, or that a union passenger station or buildings incidental thereto, be erected by petitioners, or that it is necessary to construct said union passenger station in order to eliminate any railroad traffic from the streets specified in said Commission's decisions and orders.

XII.

That respondents had no jurisdiction, authority or power to make and enter said orders requiring petitioners and their co-defendants to erect said union passenger station and buildings incidental thereto and re-

quiring the joint use thereof by the carriers named in said order for the reason that the necessary effect of said decisions and orders is to require the use of the terminal facilities in said City of Los Angeles owned by Southern Pacific Railroad Company and controlled and operated by Southern Pacific Company and used by petitioners in the conduct of their interstate business with said other carriers, and would require the use of the main line track or tracks owned by Southern Pacific Railroad Company and operated by Southern Pacific Company for a reasonable distance outside of their terminal at said City of Los Angeles by the other carriers named in said decisions and orders.

That at the time said decisions were rendered and said orders made the power and authority to so require the use of said terminal facilities owned and operated respectively by petitioners, including the main line track or tracks for a reasonable distance outside of their said terminal by any other carrier or carriers and to permit or require petitioners to extend their lines of railroad, or operate such extensions, or to make additions to, extensions of, improvements to, and changes in their existing railroad facilities was vested solely in the Interstate Commerce Commission by the provisions of paragraph 4 of Section 3, and paragraphs 15, 18, 19, 20, and 21 of Section 1 of said Act to Regulate Commerce, as amended February 28, 1920, and that for the reasons above stated the authority attempted to be exercised by the respondents in making and entering said orders is in contravention of and repugnant to said Act to Regulate Commerce in that the authority so attempted to be exercised is vested solely in said Interstate Commerce Commission

by the provisions of said act and the power sought to be exercised by said respondents therefore invaded the authority and jurisdiction of the Interstate Commerce Commission and is in contravention of and repugnant to Section 8 of Article 1 of the Constitution of the United States.

XIII.

That the said Respondents have no jurisdiction, authority or power to make an order requiring petitioners to join with the other carriers named in said orders in erecting said union passenger station and in constructing the extensions, additions and betterments in connection therewith and appurtenant thereto for the reason that the cost thereof to petitioners is beyond their financial ability and would require petitioners to make expenditures therefor for which petitioners have no available funds and for which no funds could be procured except by the issuance of securities, which said securities could not be issued except and with approval, authority and order of the Interstate Commerce Commission which has been vested with the sole and exclusive power and authority to authorize the issuance of said securities for said purposes by the provisions of Section 20*a* of said Act to Regulate Commerce, as amended February 28, 1920, and therefore said decisions and orders are in contradiction of and repugnant to the provisions of Section 8 of Article 1 of the Constitution of the United States.

XIV.

That said decisions and orders are unlawful in that by said decisions and orders the obligations of the con-

tract made and entered into by and between the State of California and Southern Pacific Railroad Company, the predecessor in interest of petitioner, Southern Pacific Railroad Company, and lessor of petitioner, Southern Pacific Company, under and by virtue of the laws of the State of California, and the grant thereby made to said Southern Pacific Railroad Company and the acceptance of said grant and right by the filing of its articles of incorporation and the construction of its railroad commencing at the City and County of San Francisco, and running thence to and through said City of Los Angeles to San Pedro, and from, in and through the City of Los Angeles to the Colorado River and to other places, cities and towns in the State of California, are impaired, in contravention of and repugnant to the provisions of Section 10 of Article 1 of the Constitution of the United States, and petitioners by said decisions and orders are deprived of their property without due process of law in contravention of and repugnant to the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

XV.

That said decisions and orders are unlawful in that by said decisions and orders the obligations of the contract made and entered into by and between the City of Los Angeles and Southern Pacific Railroad Company, the predecessor in interest of petitioner, Southern Pacific Railroad Company, and lessor of petitioner, Southern Pacific Company, under and by virtue of the laws of the State of California and the charter of the City of Los Angeles and the grant thereby made to said South-

ern Pacific Railroad Company by the ordinance authorizing the construction and operation of its railroad in Alameda Street, and the acceptance of said grant and rights by the construction and operation of its railroad commencing in the City and County of San Francisco and running thence to and through the City of Los Angeles to San Pedro and from, in, and through the said City of Los Angeles to the Colorado River, and to other places, cities, and towns in the State of California, are impaired, in contravention of and repugnant to the provisions of Section 10 of Article 1 of the Constitution of the United States, and petitioners by said decisions and orders are deprived of their property without due process of law in contravention of and repugnant to the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

XVI.

That unless the operation and enforcement of said decisions and orders entered and rendered by respondents be stayed and suspended during the pendency of the writ of review hereinafter prayed for, great and irreparable injury will result to your petitioners.

WHEREFORE, Petitioners pray for an order of said Supreme Court of the State of California, directing the issuance of a writ of review for the purpose of inquiring into and determining the lawfulness of said decisions and orders of said Respondents and the order of said Respondents denying petitioners' application for a rehearing, and of inquiring into and determining whether said Respondents regularly pursued their authority in issuing said orders and decisions and whether

said Respondents are vested with power or authority to enter said orders and decisions and whether said orders and decisions violate any right of petitioners under the Constitution of the United States or the State of California; that such writ be made returnable not later than thirty (30) days after the issuance thereof; and that said court by said writ direct said Respondents to certify fully to this Court at a specified time and place a transcript of all the records and proceedings in said cases numbered 970, 971, 972, 974, 980, 981 and 983, and said application No. 3346; that the same may be reviewed by this Court.

And your petitioners further pray that during the pendency of said writ of review the operation and enforcement of said decisions and orders entered and rendered by respondents be stayed and suspended.

And your petitioners further pray that upon the return of said writ and the record certified to by said Commission therewith, that said orders of said Commission be set aside, vacated, cancelled and annulled, and for such other and further relief in the premises as may be proper.

C. W. DURBROW,
Attorney for Petitioners.

WM. F. HERRIN,
Of Counsel.

City and County of San Francisco,
State of California.—ss.

G. L. King, being first duly sworn, deposes and says: That he is an officer, to-wit, Assistant Secretary, of

Southern Pacific Company, one of the Petitioners named in the above entitled action; that he has read the foregoing Petition for Writ of Review and that the same is true except as to those matters which are therein stated upon information or belief, and as to those matters that he believes it to be true.

G. L. King.

Subscribed and sworn to before me this 31st day of December, 1921.

(Notarial Seal) Frank Harvey,
Notary Public in and for the City and County of San Francisco, State of California.

In the Supreme Court of the State of California.

The Atchison, Topeka and Santa Fe Railway Company (a corporation),

Petitioner,

vs.

Railroad Commission of the State of California, and H. W. Brundige, H. D. Loveland, Irving Martin, Chester H. Rowell and H. S. Benedict, as Members of and Constituting said Commission,

Respondents.

PETITION FOR WRIT OF REVIEW.

To the Honorable, the Supreme Court of the State of California:

The petitioner, The Atchison, Topeka and Santa Fe Railway Company, respectfully shows:

I.

That at all times hereinafter mentioned your petitioner was and now is a corporation organized and existing under the laws of the State of Kansas and authorized to do business as a common carrier by railroad in the State of California and in other states, and engaged in that business in said State of California and in other states, and engaged in interstate commerce in the State of California and other states; that respondents, H. W. Brundige, H. D. Loveland, Irving Martin, Chester D. Rowell and H. S. Benedict are the duly appointed, qualified and acting members of the Railroad Commission of the State of California.

II.

That heretofore and before the first day of January, 1916, there had been begun and were then pending before said Commission certain proceedings known upon the records of said Commission as Case No. 970, Case No. 971, Case No. 972, Case No. 974, Case No. 980, Case No. 981, Case No. 983 and Application No. 3346, that said proceedings and certain proceedings known as informal proceedings were, by orders of said Commission duly made, consolidated and heard together and disposed of as hereinafter set forth, that your petitioner was made a party defendant to all of the said cases, but not to said application; the parties to said proceedings and a history of the litigation are shown in Exhibit A hereto attached and made part hereof; that in said consolidated proceedings, after the same had been heard and evidence taken and arguments made and consideration had, said Commission on the 26th day of April, 1921, rendered and entered its opinion, findings and order known upon the records of said Commission as decision No. 8901, whereof said Exhibit A is a copy; that thereafter and within the time allowed by law your petitioner filed with said Commission its application for a rehearing of the said proceedings and of the said decision and order, a copy of which application is hereto attached, marked Exhibit B, and made a part hereof; that thereupon a rehearing of said proceeding was granted and thereafter such proceedings were had in said consolidated proceeding; that on the 6th day of December, 1921, said Commission rendered its opinion,

findings and order on such rehearing and in said consolidated proceeding, which decision is known upon the records of said Commission as decision No. 9838, a copy whereof is hereto attached, marked Exhibit C and made a part hereof; that thereafter and within the time allowed by law your petitioner duly filed with said commission its application for rehearing of said consolidated proceeding, a copy of which application is hereto attached marked Exhibit D and made a part hereof; that thereafter by order made and entered on the 28th day of December, 1921, said Commission denied said last mentioned application, a copy of which last mentioned order is hereto attached, marked Exhibit E and made a part hereof.

That said order and decision of respondents so made on the 26th day of April, 1921, and said order and decision of respondents so made as aforesaid on the 6th day of December, 1921, were and are erroneous and contrary to law in the particulars, for the reasons and upon the grounds set forth in said applications of this petitioner for rehearing, all of which particulars, reasons and grounds are hereby referred to and relied upon as set forth in said Exhibits B and D, the same as if they were here at large set forth. That in making said decision and order last referred to respondents did not regularly pursue their authority; that respondents had no jurisdiction to make such decisions and orders; that said decisions and orders violated the rights of your petitioner under the Constitution of the United States and

particularly under section 8 of article I of said Constitution commonly known as "Commerce Clause," and under section 1 of the Fourteenth Amendment to said Constitution, and under act commonly known as "Interstate Commerce Act of the Congress of the United States" as set forth in said applications shown in the two last named exhibits and in each of them; that said decisions and orders violated the rights of your petitioner under the Constitution of the State of California, and particularly under section 13 of article I thereof; that your petitioner has no appeal or any other remedy in the premises except the writ of review issued by this Honorable Court.

That unless the operation and enforcement of said order so made on the 5th day of December, 1921, be stayed and suspended during the pendency of the writ of review hereinafter prayed for, great and irreparable injury will result to your petitioner.

Wherefore, your petitioner prays that this court order the issuance of the writ of review for the purpose of having the lawfulness of said decisions and orders so made and entered inquired into and determined, and that such writ be made returnable at a convenient time and place and direct said respondents to certify their record in said proceeding wherein said decisions and orders were made as aforesaid to this Honorable Court.

And your petitioner further prays that upon the return of said writ and of said record said decisions and orders be set aside, annulled and be adjudged void and

that your petitioner shall have such relief as by the court shall be deemed proper in the premises.

Dated 30th day of December, 1921.

The Atchison, Topeka & Santa Fe Railway Co.,
(Corporate Seal.) Petitioner.

By L. L. Hibbard,
Its General Manager.

E. W. Camp,
Paul Burks,
M. W. Reed,
Rob't Brennan,
E. T. Lucey,
Attorneys for Petitioner.

State of California, County of Los Angeles—ss.

L. L. Hibbard, being by me first duly sworn, deposes and says: that he is the general manager of the petitioner in the above entitled proceeding; that he has heard read the foregoing petition for writ of review and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

L. L. Hibbard.

Subscribed and sworn to before me this 4th day of January, 1922.

(Seal.) C. N. Stedman,

Notary Public in and for the County of Los Angeles, State of California.

In the Supreme Court of the State of California.

Los Angeles & Salt Lake Railroad Company (a corporation),

Petitioner,

vs.

The Railroad Commission of the State of California, and H. W. Brundige, H. D. Loveland, Irving Martin, Chester H. Rowell and H. S. Benedict, as Members of and Constituting Said Commission,

Respondents.

PETITION FOR WRIT OF REVIEW.

To the Honorable, the Supreme Court of the State of California:

The petitioner, Los Angeles & Salt Lake Railroad Company, respectfully shows:

I.

That at all times hereinafter mentioned your petitioner was and now is a corporation organized and existing under the laws of the State of Utah and authorized to do business as a common carrier by railroad in the State of California and in other states, and engaged in that business in said State of California and in other states, and engaged in interstate commerce in the State of California and other states, and to, from and between points in the State of California and points in other states of the United States; that respondents, H. W. Brundige, H. D. Loveland, Irving Martin, Chester D.

Rowell and H. S. Benedict are the duly appointed qualified and acting members of the Railroad Commission of the State of California.

II.

That heretofore and before the first day of January, 1916, there had been begun and were then pending before said Commission certain proceedings known upon the records of said Commission as case No. 970, case No. 971, case No. 972, case No. 974, case No. 980, case No. 981, case No. 983 and application No. 3346; that said proceedings and certain proceedings known as informal proceedings were, by orders of said commission duly made, consolidated and heard together and disposed of as hereinafter set forth; that your petitioner was made a party defendant to all of the said cases, and is a party to said application; that the parties to said proceedings and a history of the litigation are shown in Exhibit A hereto attached and made part hereof; that in said consolidated proceedings, after the same had been heard and evidence taken and arguments made and consideration had, said Commission on the 26th day of April, 1921, rendered and entered its opinion, findings and order known upon the records of said Commission as decision No. 8901, whereof said Exhibit A is a copy; that thereafter and within the time allowed by law your petitioner filed with said Commission its application for a rehearing of the said proceedings and of the said decision and order, a copy of which application is hereto attached, marked Exhibit B, and made a part hereof; that thereupon a rehearing of said proceedings was

granted and thereafter further proceedings were had in said consolidated proceedings; that on the 6th day of December, 1921, said commission rendered its opinion, findings and order on such rehearing and in said consolidated proceedings, which decision is known upon the records of said commission as decision No. 9838, a copy whereof is hereto attached, marked Exhibit C and made a part hereof; that thereafter and within the time allowed by law your petitioner duly filed with said Commission its application for rehearing of said consolidated proceedings, a copy of which application is hereto attached, marked Exhibit D and made a part hereof; that thereafter said Commission denied said last mentioned application, by its order made and entered on 28th day of December, 1921.

III.

That said order and decision of respondents so made on the 21st day of April, 1921, and said order and decision of respondents so made as aforesaid on the 6th day of December, 1921, were and are erroneous and contrary to law in the particulars, namely: For the reasons and upon the grounds set forth in said applications of this petitioner for rehearing, all of which particulars, reasons and grounds are hereby referred to and relied upon as set forth in said Exhibits B and D, the same as if they were here at length set forth. That in making said decision and order last referred to respondents did not regularly pursue their authority; that respondents had no jurisdiction or power or authority to make such decisions and orders; that said decisions and orders violated the rights of your petitioner under the Constitu-

tion of the United States and particularly under section 8 of article I of said Constitution commonly known as "Commerce Clause," and under section 1 of the fourteenth amendment to said Constitution, and under act commonly known as "Interstate Commerce Act of the Congress of the United States" as set forth in said application shown in the two last named exhibits and in each of them; that said decisions and orders violated the rights of your petitioner under the Constitution of the State of California, and particularly under section 13 of article I thereof; that your petitioner has no appeal or any other remedy in the premises except the writ of review issued by this Honorable Court.

IV.

That unless the operation and enforcement of said order so made on the 6th day of December, 1921, be stayed and suspended during the pendency of the writ of review hereinafter prayed for, great and irreparable injury will result to your petitioner.

Wherefore, your petitioner prays:

That this court order the issuance of the writ of review for the purpose of having the lawfulness of said decisions and orders so made and entered inquired into and determined, and that such writ be made returnable at a convenient time and place and direct said respondents to certify their record in said consolidated proceedings wherein said decisions and orders were made as aforesaid to this Honorable Court; and that respondents in the meantime be required to desist from further proceedings therein.

And your petitioner further prays that upon the return of said writ and of said record, said decisions and orders be set aside, annulled and be adjudged void, and that your petitioner shall have such relief as by the court shall be deemed proper in the premises.

Los Angeles, California, December 31, 1921.

LOS ANGELES & SALT LAKE RAILROAD COMPANY,
Petitioner.

By W. H. Comstock,
Its General Manager.

A. S. HALSTED,
FRED E. PETTIT, JR.,
Attorneys for Petitioner.

State of California, County of Los Angeles—ss.

W. H. Comstock, being by me first duly sworn, deposes and says: That he is an officer, to-wit, the general manager of Los Angeles & Salt Lake Railroad Company, the petitioner, in the above entitled proceedings; that he has read the foregoing petition for writ of review and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

W. H. Comstock.

Subscribed and sworn to before me this 31st day of December, 1921.

(Seal) Amelia Guest,
Notary Public in and for the County of Los Angeles, State of California.

In the Supreme Court of the State of California.

S. F. 10,111

Southern Pacific Company (a corporation), Southern Pacific Railroad Company (a corporation),

Petitioner,

vs.

Railroad Commission of the State of California, and Harvey D. Loveland, Harley W. Brundige, Irving Martin, Chester H. Rowell and H. Stanley Benedict, Members of and Constituting said Railroad Commission,

Respondents.

WRIT OF REVIEW.

People of the State of California,

To Railroad Commission of the State of California, Harvey D. Loveland, Harley W. Brundige, Irving Martin, Chester H. Rowell, and H. Stanley Benedict, Members of and Constituting said Railroad Commission,

Greetings:

Whereas it manifestly appears from the verified petition of the petitioners above named, filed herein, that those certain orders and decisions made and rendered by respondents, Railroad Commission of the State of California, and the constituent members thereof, on the 26th day of April, 1921, and the 6th day of December, 1921, and also that certain order and decision made and rendered by said respondents on the 28th day of December, 1921, denying petitioners' application for a re-

hearing in those certain proceedings entitled The Municipal League vs. Southern Pacific Company, the Atchison, Topeka and Santa Fe Railway Company and San Pedro, Los Angeles and Salt Lake Railroad Company, case No. 970; Central Development Association of Los Angeles vs. Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, and San Pedro, Los Angeles and Salt Lake Railroad Company, Case No. 971; Civic Center Association of Los Angeles vs. Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, and San Pedro, Los Angeles and Salt Lake Railroad Company, Case No. 972; City of Pasadena, a municipal corporation, vs. Pacific Electric Railway Company, Southern Pacific Company, Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, and City of Los Angeles, Case No. 974; City of Alhambra, a municipal corporation, vs. Pacific Electric Railway Company, Southern Pacific Company, Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, and City of Los Angeles, Case No. 980; City of San Gabriel, a municipal corporation, vs. Pacific Electric Railway Company, Southern Pacific Company, Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, and City of Los Angeles, Case No. 981; City of South Pasadena, a municipal corporation, vs. Pacific Electric Railway Company, Southern Pacific Company, Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, and City of Los Angeles, Case No. 983; and the Matter of the

Application of Southern Pacific Railroad Company, Southern Pacific Company and Los Angeles and Salt Lake Railroad Company for approval of agreement for joint terminal facilities in Los Angeles, California, Application No. 3346, should be reviewed by us for the reasons stated in said petition;

Now, therefore, you, the said respondents Railroad Commission of the State of California, and the constituent members thereof above named, are hereby ordered and directed to certify to this court, at its court room in the Wells Fargo Building on the northerly corner of Second and Mission Streets, in the City and County of San Francisco, State of California, on the 6th day of February, 1922, at 10 o'clock A. M. and annex to this writ a full and complete record of all proceedings in said case before said Commission, leading up to the making of said orders and decisions and each of them, including all of the pleadings and orders made and entered in said proceedings, the transcript of the testimony taken at all hearings had therein, and applications of the petitioners for rehearing of said proceedings, and all orders made by you in the premises, for the purpose of having the lawfulness of said orders and decisions, and each of them, inquired into and determined, and that this court may further cause to be done in the premises what it may appear of right ought to be done, and that in the meantime you desist from any further proceedings in said matter sought to be reviewed by petitioners.

Witness the Honorable Lucien Shaw, Chief Justice of the Supreme Court of the State of California, and the seal of said court, the 7th day of January, 1922.

B. GRANT TAYLOR,
Clerk of the Supreme Court
of the State of California.
By I. Erb,
Deputy Clerk.

(Seal of Supreme Court of California)

(Endorsed): S. F. No. 10,111—In the Supreme Court of the State of California—Southern Pacific Company, a corporation, Southern Pacific Railroad Company (a corporation), Petitioners, vs. Railroad Commission of the State of California, etc., Respondents. Writ of Review.

Filed, Jan. 12, 1922.

B. Grant Taylor, Clerk,
By J. ....., Deputy.
C. W. Durbrow,
Attorney for Petitioners,
65 Market Street, San Francisco, Cal.

In the Supreme Court of the State of California.

L. A. No. 7166

The Atchison, Topeka and Santa Fe Railway Company (a corporation),

Petitioner,

vs.

Railroad Commission of the State of California, and H. W. Brundige, H. D. Loveland, Irving Martin, Chester H. Rowell and H. S. Benedict, as Members of and Constituting said Commission,

Respondents.

WRIT OF REVIEW.

The People of the State of California to the Railroad Commission of the State of California and H. W. Brundige, H. D. Loveland, Irving Martin, Chester H. Rowell and H. S. Benedict as members of and constituting said Commission:

Whereas, we have understood that lately before you, or a majority of you, composing at the time the Railroad Commission of the State of California, such proceedings have been had that you, or a majority of you, have irregularly and without authority of jurisdiction in the premises commanded The Atchison, Topeka and Santa Fe Railway Company, petitioner above named, to proceed with the Southern Pacific Company and the Los Angeles and Salt Lake Railroad Company to the

procurement of sufficient grounds within certain boundaries set forth by you and to proceed with said other companies with the construction of an adequate Union Passenger Station on said premises and buildings incidental thereto, in the City of Los Angeles in said state, and to do and perform various and sundry other acts as will more fully appear in and by your said order and decision which are known and numbered as Decision No. 9838 in Case No. 970 of your records and certain other cases consolidated and heard therewith; and

Whereas, it is alleged by said petitioner that your proceedings have been irregular and without authority and in violation of the laws of the State of California and of the Constitution of the United States as will more fully appear from the petition of the said petitioner on file in our Supreme Court, and we being willing for certain reasons that all of the proceedings concerning said order before you remain and that all the proceedings thereto appertaining should be certified and returned by you into our Supreme Court before our Justices thereof at a general term of said court to be held at the City and County of San Francisco, on the 6th day of February, 1922, do command you that you certify and return into our Supreme Court before our said Justices at such general term of said court at the place aforesaid at the opening of the court on that day all the proceedings concerning the said order had and taken by and remaining before you so that our said

court may act thereon as of right and according to law ought to be done and have you then and there this writ.

Witness

HONORABLE LUCIEN SHAW,
Chief Justice of our Said Supreme Court at San Francisco the 16th day of January, A. D. 1922.

By the Court:

(Seal) B. Grant Taylor,
Clerk,
By Hugh P. Coultis,
Deputy Clerk.

(Endorsed): No. 7166. Dept.

In the Supreme Court of the State of California.

The Atchison, Topeka and Santa Fe Railway Company, a corp., plaintiff v. Railroad Commission of the State of California, etc., defendant.

Writ of Review.

Received copy of the within..... this..... day of ..... 19.....

.....

Attorney for.....

E. W. Camp, Robert Brennan, M. W. Reed, attorneys for Plaintiff.

In the Supreme Court of the State of California.

Los Angeles & Salt Lake Railroad Company, (a corporation),

Petitioner,

vs.

Railroad Commission of the State of California, and Harvey D. Loveland, Harley W. Brundige, Irving Martin, Chester H. Rowell and H. Stanley Benedict, members of and constituting said Railroad Commission,

Respondents.

WRIT OF REVIEW.

People of the State of California,

To Railroad Commission of the State of California, Harvey D. Loveland, Harley W. Brundige, Irving Martin, Chester H. Rowell and H. Stanley Benedict, members of and constituting said Railroad Commission,

Greetings:

Whereas, it manifestly appears from the verified petition of the petitioner above named, filed herein, that those orders and decisions made and rendered by respondents, Railroad Commission of the State of California, and the constituent members thereof, on the 26th day of April, 1921, and the 6th day of December, 1921, and also that certain order and decision made and rendered by said respondents on the 28th day of December, 1921, denying petitioner's application for a rehearing in those certain proceedings entitled The Municipal League vs. Southern Pacific Company, The

Atchison, Topeka and Santa Fe Railway Company and San Pedro, Los Angeles and Salt Lake Railroad Company, Case No. 970; Central Development Association of Los Angeles vs. Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and San Pedro, Los Angeles and Salt Lake Railroad Company, Case No. 971; Civic Center Association of Los Angeles vs. Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, and San Pedro, Los Angeles and Salt Lake Railroad Company, Case No. 972; City of Pasadena, a municipal corporation, vs. Pacific Electric Railway Company, Southern Pacific Company, Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, and City of Los Angeles, Case No. 974; City of Alhambra, a municipal corporation, vs. Pacific Electric Railway Company, Southern Pacific Company, Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, and City of Los Angeles, Case No. 980; City of San Gabriel, a municipal corporation, vs. Pacific Electric Railway Company, Southern Pacific Company, Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, and City of Los Angeles, Case No. 981; City of South Pasadena, a municipal corporation, vs. Pacific Electric Railway Company, Southern Pacific Company, Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, and City of Los Angeles, Case No. 983; and in The Matter of the Application of Southern Pacific Railroad Company, Southern Pacific Company and Los Angeles and Salt

Lake Railroad Company for approval of agreement for joint terminal facilities in Los Angeles, California, Application No. 3346, should be reviewed by us for the reasons stated in said petition;

Now, therefore, you, the said respondents Railroad Commission of the State of California, and the constituent members thereof above named, are hereby ordered and directed to certify to this court, at its court room in the Wells Fargo Building on the northerly corner of Second and Mission Streets, in the City and County of San Francisco, on the 6th day of February, 1922, at 10 o'clock A. M., and annex to this writ a full and complete record of all proceedings in said case before said Commission, leading up to the making of said orders and decisions and each of them, including all of the pleadings and orders made and entered in said proceedings, the transcript of the testimony taken at all hearings had therein, and applications of the petitioner for rehearing of said proceedings, and all orders made by you in the premises, for the purpose of having the lawfulness of said orders and decisions, and each of them, inquired into and determined, and that this Court may further cause to be done in the premises what it may of right ought to be done.

Witness the Honorable Lucien Shaw, Chief Justice of the Supreme Court of the State of California, and the seal of said Court, the 17th day of January, 1922.

(Seal) B. Grant Taylor,
Clerk of the Supreme Court of the State of California.

By M. C. Van Allen,
Deputy Clerk.

(Endorsed): L. A. No. 7166. In the Supreme Court of the State of California. Los Angeles & Salt Lake Railroad Co., (a corp.), Petitioner, vs. Railroad Commission of the State of California, et al., Respondents. Writ of Review. Filed Jan. 27, 1922. B. Grant Taylor, Clerk. By Van Allen, Clerk. Service of the within is hereby admitted this ..... day of ..... 19.....

.....Attorney for.....

A. S. Halsted, Fred E. Pettit, Jr. Suite 504 Pacific Electric Building, Los Angeles, Cal. Telephones: Sunset Main 8908, Home 10031. Attorneys for Pet.

In the Supreme Court of the State of California.

S. F. No. 10,111

Southern Pacific Company (a corporation), Southern Pacific Railroad Company (a corporation),

Petitioners,

vs.

Railroad Commission of the State of California, and Harvey D. Loveland, Harley W. Brundige, Irving Martin, Chester H. Rowell and H. Stanley Benedict, members of and constituting said Railroad Commission,

Respondents.

RETURN

TO WRIT OF REVIEW.

I, H. G. Mathewson, secretary of the Railroad Commission of the State of California, respondent herein, do hereby certify to the Supreme Court of the State of California:

That as secretary of the Railroad Commission of the State of California I have kept a true and complete record of the pleadings, transcript of testimony, exhibits, record and proceedings in those certain proceedings before the Railroad Commission entitled:

The Municipal League v. Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company

and San Pedro, Los Angeles and Salt Lake Railroad Company. Case No. 970;

Central Development Association of Los Angeles v. Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and San Pedro, Los Angeles and Salt Lake Railroad Company. Case No. 971;

Civic Center Association of Los Angeles v. Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, and San Pedro, Los Angeles and Salt Lake Railroad Company. Case No. 972;

City of Pasadena, a municipal corporation, v. Pacific Electric Railway Company, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, and City of Los Angeles. Case No. 974;

City of Alhambra, a municipal corporation v. Pacific Electric Railway Company, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, and City of Los Angeles. Case No. 980;

City of San Gabriel, a municipal corporation v. Pacific Electric Railway Company, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, and City of Los Angeles. Case No. 981;

City of South Pasadena, a municipal corporation v. Pacific Electric Railway Company, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake

Railroad Company, and City of Los Angeles. Case No. 983; and

In the Matter of the Application of Southern Pacific Railroad Company, Southern Pacific Company and Los Angeles and Salt Lake Railroad Company for approval of agreement for joint terminal facilities in Los Angeles, California, Application No. 3346.

That filed herewith are the transcripts of testimony in said proceedings, together with all exhibits, pleadings and orders of the Railroad Commission of the State of California made and filed therein, and that the same constitute the full, true and complete record in the proceedings in the above-entitled matters before the Railroad Commission of the State of California.

In witness whereof, I have hereunto set my official signature and affixed the seal of the Railroad Commission of the State of California, this 6th day of February, 1922.

(Seal)

H. G. MATHEWSON,
Secretary, Railroad Commission
of the State of California.

(Endorsed): S. F. 10,111.

In the Supreme Court of the State of California.

Southern Pacific Company, a corporation, et. al., petitioners v. Railroad Commission of the State of California, respondents.

Return to Writ of Review.

Original.

Filed, Feb. 6, 1922, B. Grant Taylor, Clerk, by J., Deputy.

Hugh Gordon, William W. Clary, attorneys for respondents, 9th Floor Flood Bldg., San Francisco, Calif.

In the Supreme Court of the State of California.

L. A. No. 7166

The Atchison, Topeka and Santa Fe Railway Company (a corporation),

Petitioner,

vs.

Railroad Commission of the State of California, and H. W. Brundige, H. D. Loveland, Irving Martin, Chester H. Rowell and H. S. Benedict, as members of and constituting said Commission.

RETURN

TO WRIT OF REVIEW.

I, H. G. Mathewson, secretary of the Railroad Commission of the State of California, respondent herein, do hereby certify to the Supreme Court of the State of California:

That as secretary of the Railroad Commission of the State of California I have kept a true and complete record of the pleadings, transcript of testimony, exhibits, record and proceedings in those certain proceedings before the Railroad Commission of the State of California, referred to in the writ of review issued out of said court on the 16th day of January, 1922, as Case No. 970 and certain other cases consolidated and heard therewith;

That the transcript of testimony in said proceedings, together with all exhibits, pleadings and orders of the

Railroad Commission of the State of California made and filed therein and constituting the full, true and complete record in the proceedings above referred to before the Railroad Commission, are on file with the Supreme Court of the State of California in the case of *Southern Pacific Company et al. v. Railroad Commission et al.*, S. F. No. 10,111; that said transcripts, exhibits, pleadings and orders were filed in the Supreme Court in said Case S. F. No. 10,111 pursuant to a writ of review issued by said court on the 16th day of January, 1922; that said transcripts, exhibits, pleadings and orders are hereby referred to, and by reference are made a part of this return.

In witness whereof, I have hereunto set my official signature and affixed the seal of the Railroad Commission of the State of California this 6th day of February, 1922.

H. G. MATHEWSON, (Seal)
Secretary, Railroad Commission of the State of California.

(Endorsed): L. A. No. 7166.

In the Supreme Court of the State of California.

The Atchison, Topeka and Santa Fe Railway Company (a corporation), petitioners, vs. Railroad Commission of the State of California et al., respondents.

Return to Writ of Review and Memorandum of Documents.

Filed Feb. 6, 1922, B. Grant Taylor, by ....., Deputy.

Hugh Gordon, William W. Clary, attorneys for respondents, 9th Floor Flood Bldg., San Francisco, Calif.

In the Supreme Court of the State of California.

L. A. No. 7165

Los Angeles & Salt Lake Railroad Company (a corporation), Petitioner,

vs.

Railroad Commission of the State of California et al., etc., Respondents.

RETURN

TO WRIT OF REVIEW.

I, H. G. Mathewson, secretary of the Railroad Commission of the State of California, respondent herein, do hereby certify to the Supreme Court of the State of California:

That as secretary of the Railroad Commission of the State of California I have kept a true and complete record of the pleadings, transcript of testimony, exhibits, record and proceedings in those certain proceedings before the Railroad Commission entitled:

The Municipal League vs. Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and San Pedro, Los Angeles and Salt Lake Railroad Company, Case No. 970;

Central Development Association of Los Angeles vs. Southern Pacific Company, The Atchison, Topeka and

Santa Fe Railway Company and San Pedro, Los Angeles and Salt Lake Railroad Company, Case No. 971;

Civic Center Association of Los Angeles vs. Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and San Pedro, Los Angeles and Salt Lake Railroad Company, Case No. 972;

City of Pasadena, a municipal corporation, vs. Pacific Electric Railway Company, Southern Pacific Company, Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, and City of Los Angeles, Case No. 974;

City of Alhambra, a municipal corporation, vs. Pacific Electric Railway Company, Southern Pacific Company, Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, and City of Los Angeles, Case No. 980;

City of San Gabriel, a municipal corporation, vs. Pacific Electric Railway Company, Southern Pacific Company, Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, and City of Los Angeles, Case No. 981;

City of South Pasadena, a municipal corporation, vs. Pacific Electric Railway Company, Southern Pacific Company, Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, and City of Los Angeles, Case No. 983; and

In the Matter of the Application of Southern Pacific Railroad Company, Southern Pacific Company and

Los Angeles and Salt Lake Railroad Company for approval of agreement for joint terminal facilities in Los Angeles, California, Application No. 3346.

That the transcripts of testimony in said proceedings, together with all exhibits, pleadings and orders of the Railroad Commission of the State of California made and filed therein and constituting the full, true and complete record in the above entitled proceedings before the Railroad Commission are on file with the Supreme Court of the State of California in the case of *Southern Pacific Company, et al., v. Railroad Commission of the State of California, et al.*, S. F. No. 10,111. That said transcripts, exhibits, pleadings and orders were filed in the Supreme Court in said case S. F. No. 10,111 pursuant to a writ of review issued by said court on January 7, 1922. That said transcripts, exhibits and pleadings and orders are hereby referred to, and by reference are made a part of this return.

In witness whereof, I have hereunto set my official signature and affixed the seal of the Railroad Commission of the State of California this 6th day of February, 1922.

H. G. MATHEWSON, (Seal)
Secretary, Railroad Commission of the State of California.

(Endorsed): L. A. No. 7165.

In the Supreme Court of the State of California.

The Los Angeles and Salt Lake Railroad Company (a corporation), petitioner, vs. Railroad Commission of the State of California et al., respondents.

Return to Writ of Review and Memorandum of Documents.

Filed Feb. 6, 1922, B. Grant Taylor, Clerk, by ....., Deputy.

Hugh Gordon, William W. Clary, attorneys for respondents, 9th Floor Flood Bldg., San Francisco, Calif.

In the Supreme Court of the State of California.

In Bank.

Monday, February 6, 1922.

Southern Pacific Company vs. Railroad Commission.	S. F. 10,111
Los Angeles & Salt Lake Railroad Company vs. Railroad Commission.	L. A. 7165
Atchison, Topeka & Santa Fe Railroad Company vs. Railroad Commission.	L. A. 7166

REVIEW.

By consent, L. A. 7165 and L. A. 7166 consolidated with S. F. 10,111 for hearing and decision. Petitioners granted sixty days to file brief, respondent forty days to answer, petitioners thirty days to close, matters then to be submitted. Respondent files return in all three cases, the transcript and pleadings in S. F. 10,111 to apply as the record on return in L. A. 7165 and 7166.

Bank.

Atchison, Topeka & Santa Fe Ry. Co. v. Railroad Commission.	No. 7166
Los Angeles & Salt Lake R. R. Co. v. Railroad Commission.	No. 7165
Southern Pacific Company v. Railroad Commission.	No. 10,111

By the court:

These three proceedings were instituted before this court for the purpose of having reviewed and annulled an order of the Railroad Commission, made in certain proceedings before that body of the following nature: In 1916 the Civic Center Association of the City of Los Angeles filed a complaint before the commission against the Southern Pacific Company, the Atchison, Topeka & Santa Fe Company and the Los Angeles and Salt Lake Company, praying for an order providing for the elimination of certain grade crossings in said City and for the establishment of a union depot therein. Two other civic organizations of said City presently filed similar petitions asking for like orders. Four petitions were

also filed from adjacent municipalities asking for the elimination of grade crossings and a reorganization of the track systems of these several railroad corporations. In addition to these the Southern Pacific Company and the Los Angeles & Salt Lake Railroad Company united in an application to the commission for the establishment of a union terminal depot as to themselves upon a certain site and also for the elimination of certain grade crossings as an incident to the location of said terminal. These eight proceedings were consolidated by the stipulation of all of the parties and heard as one proceeding before the commission; which, after a prolonged and exhaustive consideration of the issues involved made its order for the elimination of certain grade crossings and for the establishment of a union terminal depot for all of said railroads, to be located within a certain defined area. The present proceedings were instituted to review this order. Upon the filing of the return to the writ this court made an order consolidating these three proceedings for the purpose of hearing and decision.

This court has already had before it the question as to the power of the Railroad Commission to provide for the elimination of grade crossings as to all of the present petitioners, in the case of Civic Center Association, etc. v. Railroad Commission 175 Cal. 441, in which case it was held as between itself and the City of Los Angeles the Railroad Commission possessed this power and was directed to exercise it. In proceeding to exercise said power pursuant to such direction the Railroad Commission in the course of hearing upon the consoli-

dated proceeding before it, concluded that as an indispensable element in the elimination of the proposed grade crossings it was necessary to provide for a union terminal depot for all three railroads, with such changes and extensions of the railroad lines of each as would be necessary for the utilization of said depot by each and all of these railroads; and it therefore assumed and exercised the power so to do, whereupon the present proceedings were instituted by the petitioners herein.

The main contention of the petitioners is that the Railroad Commission has no jurisdiction to make any order or orders relative to the establishment and construction of a union depot for part or all of the petitioners herein, for the reason that such power has been taken from the state and its agency and has been vested in the Interstate Commerce Commission by virtue of the amendment to the Interstate Commerce Commission Act made by Congress on February 28, 1920. This contention, standing as it does upon the threshold of the subject under review will be first considered.

The act of Congress above referred to and commonly known as the Esch-Cummings Act, is twofold in its purposes and effects. Its first object was to accomplish the termination of the control of the railroads taken over by the Federal Government during the progress of the war by virtue of the "Federal Control Act", approved March 21, 1918, and by the later amendments to said act. The second of its main objects was to amend the act of Congress commonly known as the "Interstate Commerce Act" originally approved February 24, 1887, with its later amendments. It is with

this latter purpose that we are concerned in this proceeding. An inspection of this portion of the said amendatory act discloses that it embodies a large number of amendments to the Interstate Commerce Act as it existed at the date of said amendment, and that many of these are of the most important and far-reaching character. The Supreme Court of the United States in the recent case of Railroad Commission of Wisconsin v. Chicago, B. & Q. R. R. Co., 42 Sup. Ct. Rep. 232, in reciting the provisions and commenting upon the scope of said amendatory act says:

> "It is manifest from this very condensed recital that the act made a new departure. Theretofore the control which Congress through the Interstate Commerce Commission exercised was primarily for the purpose of preventing injustice by unreasonable or discriminatory rates against persons and localities, and the only provisions of the law that inured to the benefit of the carriers were the requirement that the rates should be reasonable in the sense of furnishing an adequate compensation for the particular service rendered and the abolition of rebates. The new measure imposed an affirmative duty on the Interstate Commerce Commission to fix rates and to take other important steps to maintain an adequate railway service for the people of the United States. This is expressly declared in section 15a to be one of the purposes of the bill."

Turning to the provisions of said amendatory act which embody these radical extensions of the powers and duties of the Interstate Commerce Commission, we find that section 15a thereof to which the foregoing decision expressly refers, greatly enlarges the powers of the Commission with regard to the regulation of, not only interstate but also of intrastate rates, whenever

the control and regulation of the latter are necessary to the exercise of the affirmative powers of Congress in developing interstate commerce. The decision above referred to expressly deals with that phase of the question and upholds the powers with which the Interstate Commerce Commission is invested under said section of the amendatory act. Turning to the provisions of said act amending the first paragraph of section 5 of the Interstate Commerce Act we find in subdivisions 4 and 5 thereof the following express statement of the scope and purposes of said act:

"(4) The Commission shall as soon as practicable prepare and adopt a plan for the consolidation of the railway properties of the continental United States into a limited number of systems. In the division of such railways into such systems under such plan, competition shall be preserved as fully as possible and wherever practicable the existing routes and channels of trade and commerce shall be maintained. Subject to the foregoing requirements, the several systems shall be so arranged that the cost of transportation as between competitive systems and as related to the values of the properties through which the service is rendered shall be the same, so far as practicable, so that these systems can employ uniform rates in the movement of competitive traffic and under efficient management earn substantially the same rate of return upon the value of their respective railway properties."

"(5) When the Commission has agreed upon a tentative plan, it shall give the same due publicity and upon reasonable notice, including notice to the Governor of each State, shall hear all persons who may file or present objections thereto. The Commission is authorized to prescribe a procedure for such hearings and to fix a time for bringing them to a close. After the hearings are at an end, the

> Commission shall adopt a plan for such consolidation and publish the same; but it may at any time thereafter, upon its own motion or upon application, reopen the subject for such changes or modifications as in its judgment will promote the public interest. The consolidation herein provided for shall be in harmony with such plan."

(U. S. Stats. at Large, Vol. 41, part 1, p. 481.) In the interpretation to be given to the further provisions of said act, having more particular reference to the immediate question before us, the foregoing provision of said act expressive of its enlarged scope and purposes are to be borne in mind. Having these in view, the following provisions of the act are found to bear directly upon the powers and functions with which the Interstate Commerce Commission have been invested, with relation to any and all extensions and changes in the lines, tracks, and facilities of railroads engaged wholly or largely in interstate commerce. The term "railroad" as used in said act is defined by subdivision 3 of section 1 of the Interstate Commerce Act as thus amended as including "all the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement or lease, and also all switches, spurs, tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, including all freight depots, yards and grounds, used or necessary in the transportation or delivery of any such property." The term "car service" as employed in said amendatory act is defined in subdivision 10 of section 1 of the Interstate Commerce Act as thus amended, to include the use, control, supply, movement, distribution, exchange, inter-

change and return of locomotives, cars and other vehicles used in the transportation of property, including special types of equipment and the supply of trains by any carrier by railroad, subject to this act. Subdivision 15 of said section 1 of the said original act as thus amended provides "whenever the Commission is of opinion that shortage of equipment, congestion of traffic, or other emergency requiring immediate action exists in any section of the country, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, if it so orders, without answer or other formal pleading by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report, according as the Commission may determine: * * * (e) to require such joint or common use of terminals, including main-line track or tracks for a reasonable distance outside of such terminals, as in its opinion will best meet the emergency and serve the public interest, and upon such terms as between the carriers as they may agree upon, or, in the event of their disagreement, as the Commission may after subsequent hearing find to be just and reasonable." Subdivision 18 of said section 1 of said original act as thus amended further provides:

"(18) After ninety days after this paragraph takes effect no carrier by railroad subject to this Act shall undertake the extension of its line of railroad, or the construction of a new line of railroad, or shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation under this Act over or

by means of such additional or extended line of railroad, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line of railroad, and no carrier by railroad subject to this Act shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment." (U. S. Stats. at Large, Vol. 41, p. 477.)

Subdivision 21 of said section 1 of said original act as thus amended in part provides: "(21) The Commission may, after hearing, in a proceeding upon complaint or upon its own initiative without complaint, authorize or require by order any carrier by railroad subject to this Act, party to such proceeding, to provide itself with safe and adequate facilities for performing as a common carrier its car service as that term is used in this Act, and to extend its line or lines: Provided, That no such authorization or order shall be made unless the Commission finds, as to such extension, that it is reasonably required in the interest of public convenience and necessity, or as to such extension or facilities that the expense involved therein will not impair the ability of the carrier to perform its duty to the public." Subdivision 22 of said section 1 of said original act as thus amended provides: "(22) The authority of the Commission conferred by paragraphs

(18) to (21), both inclusive, shall not extend to the construction or abandonment of spur, industrial, team, switching or side tracks, located or to be located wholly within one State, or of street, suburban, or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation." Subdivisions 3 and 4 of section 3 of the original act as thus amended provides: "(3) All carriers, engaged in the transportation of passengers or property, subject to the provisions of this Act, shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers or property to and from their several lines and those connecting therewith, and shall not discriminate in their rates, fares, and charges between such connecting lines, or unduly prejudice any such connecting line in the distribution of traffic that is not specifically routed by the shipper." "(4) If the Commission finds it to be in the public interest and to be practicable, without substantially impairing the ability of a carrier owning or entitled to the enjoyment of terminal facilities to handle its own business, it shall have power to require the use of any such terminal facilities, including main-line track or tracks for a reasonable distance outside of such terminal, of any carrier, by another carrier or other carriers, on such terms and for such compensation as the carriers affected may agree upon, or, in the event of a failure to agree, as the Commission may fix as just and reasonable for the use so required, to be ascer-

tained on the principle controlling compensation in condemnation proceedings. Such compensation shall be paid or adequately secured before the enjoyment of the use may be commenced. If under this paragraph the use of such terminal facilities of any carrier is required to be given to another carrier or other carriers, and the carrier whose terminal facilities are required to be so used is not satisfied with the terms fixed for such use, or if the amount of compensation so fixed is not duly and promptly paid, the carrier whose terminal facilities have thus been required to be given to another carrier or other carriers shall be entitled to recover, by suit or action against such other carrier or carriers, proper damages for any injuries sustained by it as the result of compliance with such requirement, or just compensation for such use, or both, as the case may be." The foregoing excerpts from among the many provisions of said amendatory act would seem to fully justify the statement of Chief Justice Taft, above quoted from the decision of the Supreme Court of the United States, as to the radical departure effected by the said amendment to the Interstate Commerce Act in the direction of placing the entire control over the rates, properties, tracks, terminals and facilities of the railroads engaged in interstate commerce in and under the jurisdiction of the Interstate Commerce Commission. That Congress had the full power so to do, is established by a long line of judicial decisions reaching back to the leading case of Gibbons v. Ogden, 9 Wheaton 1, wherein Chief Justice Marshall carved out the pathway for all later decisions by the declaration that the power of Congress to regulate commerce among the several states is supreme and

plenary; "is complete in itself, may be exercised to its utmost extent and acknowledges no limitations other than are prescribed in the Constitution." It is needless to cite in detail the almost numberless cases in which the doctrine enunciated in that early decision has been reiterated and applied, but among the more recent cases involving its application are the Minnesota Rate Cases, 230 U. S. 253, wherein the Supreme Court of the United States, Mr. Justice Hughes delivering the opinion (p. 432), gives very full and exhaustive consideration to the question as to the scope and effect of the federal legislation upon the subject of interstate commerce, with special reference to its limitations upon the legislative or administrative power of the states to deal with any matters relating to interstate commerce coming within the terms and scope of such federal legislation. In the course of that decision Mr. Justice Hughes makes use of the following significant language in considering certain phases of those cases analogous to those presented in the case at bar:

> "The interblending of operations in the conduct of interstate and local business by interstate carriers is strongly pressed upon our attention. It is urged that the same right-of-way, terminals, rails, bridges, and stations are provided for both classes of traffic; that the proportion of each sort of business varies from year to year and, indeed, from day to day; that no division of the plant, no apportionment of it between interstate and local traffic, can be made to-day, which will hold to-morrow; that terminals, facilities and connections in one state aid the carrier's entire business and are an element of value with respect to the whole property and the business in other States; that securities are issued against the entire line of the car-

rier and cannot be divided by States; that tariffs should be made with a view to all the traffic of the road and should be fair as between through and short-haul business; and that, in substance, no regulation of rates can be just, which does not take into consideration the whole field of the carrier's operations, irrespective of state lines. The force of these contentions is emphasized in these cases, and in others of like nature, by the extreme difficulty and intricacy of the calculations which must be made in the effort to establish a segregation of intrastate business for the purpose of determining the return to which the carrier is properly entitled therefrom.

"But these considerations are for the practical judgment of Congress in determining the extent of the regulation necessary under existing conditions of transportation to conserve and promote the interests of interstate commerce."

Numerous other cases may be cited from both federal and state courts sustaining the rule that wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves the control of the other, it is Congress, and not the State, that is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority and the State, and not the Nation, would be supreme within the national field. (Houston & Texas Ry. v. The United States, 234 U. S. 342, 351, and cases cited.) The case of People ex rel. The New York Central R. R. Co. v. Public Service Commission, 233 N. Y. 113, is a case which nearly approaches identity with the case at bar. It involves the question as to whether under the public service commission law of the State of New York the public service

commission of that state had power to make an order directing two railroad companies, engaged in interstate and intrastate commerce within that state, to reconstruct a switch or track connecting their lines and install other tracks and facilities so as to furnish adequate and convenient interchange of freight between said railroads. Upon appeal from an order dismissing a writ of review instituted by the relator for the purpose of testing the power of the public service commission to make said order it was held by said court that the state commission had no jurisdiction to make such order in view of the provisions of the act of Congress of 1920 amending the Interstate Commerce Law. The court said:

> "The Transportation Act of 1920, section 402, amended the second paragraph of section 3 of the Interstate Commerce Act to provide: 'All carriers, engaged in the transportation of passengers or property, subject to the provisions of this Act, shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of passengers or property to and from their several lines and those connecting therewith, and shall not discriminate in their rates, fares and charges between such connecting lines, or unduly prejudice any such connecting line in the distribution of traffic that is not specifically routed by the shipper.'
>
> "A violation of that provision of the act of Congress authorizes a complaint by any interested party to the interstate commerce commission, and after a hearing before that commission to such relief as the facts warrant. The interstate commerce commission is clothed with authority by the section quoted to compel carriers to afford reasonable and proper facilities for the interchange of traffic be-

> tween their respective lines. The order made by the public service commission commands relator and the Lehigh Valley to make such track connections between their roads as shall be necessary or proper to establish and furnish adequate and convenient interchange of freight between said roads. To sustain the order of the public service commission in the instant case would necessarily establish that the two several commissions mentioned were clothed with jurisdiction to grant the relief sought and require us to ignore the well-established principle of law that the Congress having delegated to the interstate commerce commission power to deal with the subject-matter of this proceeding, an exercise of like power by the state is thereby superseded." Citing Erie R. R. Co. v. People of the State of New York, 233 U. S. 671; Chicago, R. I. & P. Ry. Co. v. Hardwick Elevator Co., 226 U. S. 426.

The respondents herein, however, contend that the Railroad Commission was empowered to make and enforce the order sought to be annulled in this proceeding under the authority of the case of Missouri, etc. v. Larrabee, 211 U. S. 612. That case held that the new delegation by Congress to the Interstate Commerce Commission of power to act in a given matter did not prevent such action by the state authorities unless the commission had taken action in the particular matter involved, quoting therefrom the following:

> "Until then the authority of the state in merely incidental matters remains undisturbed. In other words, the mere grant by Congress to the Commission of certain national powers in respect to interstate commerce does not of itself, and in the absence of action by the Commission, interfere with the authority of the state to make those regulations conducive to the welfare and convenience of its citizens."

In the matter of the extension of railroad facilities and in the abandonment of other railroad facilities, including terminals, not only is the commission empowered to act upon the subject, but Congress has expressly prohibited the railroad companies from acting without the consent of the Interstate Commerce Commission. (See Section 1, Subdivision 18, supra.) Subdivision 20 of that section (41 U. S. Statutes at Large, page 478), construed in connection with subdivisions 19 and 21, authorizes the commission to issue a certificate for the extension or abandonment of portions of railway lines and for the issuance of a certificate authorizing such work to be done or a line to be abandoned (Subdivisions 18, 19, 20, 21), and with reference to such certificate provides as follows:

> "From and after issuance of such certificate, and not before, the carrier by railroad may, *without securing approval other than such certificate*, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the construction, operation, or abandonment covered thereby. Any construction, operation, or abandonment contrary to the provisions of this paragraph or of paragraph (18) or (19) of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the Commission, any commission or regulating body of the State or States affected, or any party in interest; and any carrier which, or any director, officer, receiver, operating trustee, lessee, agent, or person, acting for or employed by such carrier, who knowingly authorizes, consents to, or permits any violation of the provisions of this paragraph or of paragraph (18) of this section, shall upon conviction thereof be punished by a fine of not more than $5,000 or by imprisonment for not more than three years, or both." (Italics ours.)

It is clear from the foregoing that Congress has not only vested jurisdiction in the Interstate Commerce Commission over the question of the extension of terminal facilities, such as contemplated by the order of the Railroad Commission in the case at bar, but has also prohibited the railroads from making such improvements without the consent of the Interstate Commerce Commission. This being true, Congress has fully occupied the field of regulation of such matters and the power of the state commission has thereby been terminated.

An examination of the case of Missouri, etc. v. Larrabee, *supra*, further shows that it was decided in 1909, several years prior to the passage of the Amendatory Act of 1920, and at a time prior to any attempt on the part of Congress to invest the Interstate Commerce Commission with jurisdiction over the matter of changes or extensions in interstate railroad lines.

The respondents also urge the contention that since this court has decided in the case of Civic Center Association v. Railroad Commission, *supra*, that the Railroad Commission of California had jurisdiction to make and enforce orders providing for the elimination of those certain grade crossings involved, in part, in the proceedings before the Railroad Commission; and since the said commission had found and held in said proceedings that the establishment of a union terminal depot was an indispensable element in accomplishing the elimination of said grade crossings, the commission had the power to include in its order for the elimination of such grade crossings, the creation of such union terminal

depot. There is no merit in this contention, for the reason, very aptly set forth in the extract above quoted from the decision of the New York Court of Appeals in the case of People etc. v. Public Service Commission, *supra*. It is also without merit for the further reason that notwithstanding the views expressed by the Railroad Commission in its findings and conclusions in the proceeding herein presented for review, we can perceive no indispensable relation between the elimination of grade crossings and the establishment of union depot facilities, nor can we see any insurmountable difficulty why jurisdiction over the matter of eliminating grade crossings may not be exercised in a proper case consistently, and it may be concurrently, with the exercise of the authority which is vested by the Act of Congress of 1920 in the Interstate Commerce Commission over the subject of union terminal depot facilities.

From the foregoing excerpts from the Act of Congress of 1920, amendatory of the Interstate Commerce Law, and from the authorities above cited, we arrive at the conclusion that full power and authority over the matter of union terminal depot facilities of the railroads who are largely engaged in interstate commerce, and who are the petitioners herein, has been vested in the Interstate Commerce Commission under the terms of said amendatory act of 1920, and that by virtue thereof the Railroad Commission of California, one of the respondents herein, has been divested of the power, authority and jurisdiction over that subject, sought by it to be exercised in the several proceedings before it and by the order presented for review herein. This disposition of the primary inquiry involved in these pro-

ceedings renders unnecessary a discussion of the several subsidiary questions presented for our consideration by the briefs of counsel herein.

The application is granted and the order of the Railroad Commission annulled.

(Lennon, J., Waste, J., Wilbur, J., Shurtleff, J., Sloane, J., and Lawlor, J., concur.)

A. T. Santa Fe Ry. Co. v. R. R. Com., L. A. 7166.

Los Ang. & Salt L. R. R. Co. v. R. R. Com., L. A. 7165.

S. P. Co. v. R. R. Com., S. F. No. 10,111.

CONCURRING OPINION.

I concur in the foregoing opinion on the grounds therein stated.

I wish to say, however, in addition, that the conclusion that the Railroad Commission has no power to order the terminal depot in question constructed, can also be reached by resort to the principle laid down in Atchison, T. & S. F. Ry. Co. v. R. R. Com., 173 Cal. 577. That decision establishes the principle that railroads are private property which are devoted to public use, and that the state has no power to order the railroad company, without its consent, to establish a new line of railroad for the benefit of the public. The scheme here embraced in the order of the railroad commission contemplates the expenditure of a very large sum of money by the railroad companies in the construction of a new terminal depot for their joint use in a place where there is no existing depot and no tracks leading thereto. Entirely new tracks will have to be built to reach the new depot, and the land on which it is to be erected, and on which the track is to be built will have to be acquired by

the said companies, or by some subsidiary company in which they are all interested, and vast sums of money must be used in constructing the buildings and tracks required for the union depot.

If this be true it is equally beyond the power of the interstate commerce commission to make the order. To require the railroad companies to construct this depot and the tracks necessary therefor is equivalent to ordering them to dedicate new property to a public use. I know of no power which will justify the state in commanding a railroad company to thus acquire and dedicate property to a public use.

SHAW, C. J.

(Endorsed): Filed Dec. 19, 1922,
B. Grant Taylor, Clerk,
By Erb,
S. F. Deputy.

In the Supreme Court of the State of California.

IN BANK

S. F. No. 10,111

S. P. Co. et al.
vs.
R. R. Cmsn. et al. etc.

By the Court: Rehearing denied January 18, 1923. (All concur.)

Wilbur, C. J.

(Endorsed): Filed Jan. 18, 1923,
B. Grant Taylor, Clerk,
By Erb,
S. F. Deputy.

In the Supreme Court of the State of California.

IN BANK

L. A. No. 7166

A. T. & S. F. Ry. Co.
vs.
R. R. Cmsn. et al., etc.

By the Court: Rehearing denied January 18, 1923. (All concur.)

Wilbur, C. J.

(Endorsed): Filed Jan. 18, 1923.

B. Grant Taylor, Clerk,
By Erb,
S. F. Deputy.

In the Supreme Court of the State of California.

IN BANK

L. A. No. 7165

L. A. & S. L. R. R. Co.

vs.

R. R. Cmsn. et al., etc.

By the Court: Rehearing denied January 18, 1923. (All concur.)

Wilbur, C. J.

(Endorsed): Filed Jan. 18, 1923.

B. Grant Taylor, Clerk,
By Erb,
S. F. Deputy.

In the Supreme Court of the State of California.

BANK

San Francisco No. 10,111

Southern Pacific Company,
Petitioner,
vs.
Railroad Commission,
Respondent.

On review from the Railroad Commission of the State of California.

The above entitled matter having been heretofore fully argued, and submitted and taken under advisement, and all and singular the law and premises having been fully considered, it is ordered, adjudged and decreed by the court that the order of the Railroad Commission of the State of California in the above entitled cause be and the same is hereby annulled.

I, B. Grant Taylor, clerk of the Supreme Court of the State of California, do hereby certify that the foregoing is a true copy of an original judgment entered in the above entitled cause on the 19th day of December, 1922, and now remaining of record in my office.

Witness my hand and the seal of the court, affixed at my office, this 22d day of January, A. D. 1923.

(Seal) B. GRANT TAYLOR, Clerk,
By I. M. Johnson,
Deputy.

(Endorsed): Jan. 23, 1923.

S. F. No. 10,111.

In the Supreme Court State of California.

Remittitur. Southern Pacific Company, petitioner, vs. Railroad Commission, respondent.

In the Supreme Court of the State of California.

BANK

L. A. No. 7166

Atchison, Topeka & Santa Fe Ry. Co.,
Petitioner,

vs.

Railroad Commission,
Respondent.

On review from the Railroad Commission of the State of California.

The above entitled matter having been heretofore fully argued, and submitted and taken under advisement, and all and singular the law and premises having been fully considered, it is ordered, adjudged and decreed by the court that the order of the Railroad Commission of the State of California in the above entitled cause be and the same is hereby annulled.

I, B. Grant Taylor, clerk of the Supreme Court of the State of California, do hereby certify that the foregoing is a true copy of an original judgment entered in the above entitled cause on the 19th day of December, 1922, and now remaining of record in my office.

Witness my hand and the seal of the court, affixed at my office, this 22d day of January, A. D. 1923.

(Seal) B. GRANT TAYLOR, Clerk,
By I. M. Johnson,
Deputy.

(Endorsed): Jan. 23, 1923.

L. A. No. 7166.

In the Supreme Court State of California.

Remittitur: Atchison, Topeka & Santa Fe Ry. Co., petitioner, vs. Railroad Commission, respondent.

In the Supreme Court of the State of California.

BANK

Los Angeles No. 7165

Los Angeles & Salt Lake R. R. Co.,
Petitioner,

vs.

Railroad Commission,
Respondent.

On review from the Railroad Commission of the State of California.

The above entitled matter having been heretofore fully argued, and submitted and taken under advisement, and all and singular the law and premises having been fully considered, it is ordered, adjudged and decreed by the court that the order of the Railroad Commission of the State of California in the above entitled cause be and the same is hereby annulled.

I, B. Grant Taylor, clerk of the Supreme Court of the State of California, do hereby certify that the foregoing is a true copy of an original judgment entered in the above entitled cause on the 19th day of December, 1922, and now remaining of record in my office.

Witness my hand and the seal of the court, affixed at my office, this 22d day of January, A. D. 1923.

(Seal)

B. GRANT TAYLOR, Clerk,
By I. M. Johnson,
Deputy.

Endorsed: Jan. 23, 1923.

L. A. No. 7165.

In the Supreme Court of the State of California.

Remittitur: Los Angeles & Salt Lake R. R. Co., petitioner, vs. Railroad Commission, respondent.

In the Supreme Court of the State of California.

Southern Pacific Company, Petitioner, vs. Railroad Commission, Respondent.	S. F. No. 10,111
Atchison, Topeka & Santa Fe Railway Company, Petitioner, vs. Railroad Commission, Respondent.	L. A. No. 7166
Los Angeles & Salt Lake Railroad Company, Petitioner, vs. Railroad Commission, Respondent.	L. A. No. 7165

STIPULATION.

It is hereby stipulated between the parties to this proceeding that the documents hereinafter tabulated shall constitute the record on review to be filed with the Supreme Court of the United States with the Petition

for Certiorari to be filed with that court by the Railroad Commission of the State of California, asking a review of the decision of the Supreme Court of California rendered in the above entitled causes:

1. Complaint of the Municipal League, Case No. 970, against the Southern Pacific Co.; the Atchison, Topeka & Santa Fe Railway Co.; and the Los Angeles & Salt Lake Railroad Co., filed with the Railroad Commission July 6th, 1916 (omitting exhibits).

2. Answer of the Southern Pacific Company to complaint of Municipal League, Case No. 970, filed with the Railroad Commission of California, August 7th, 1916.

3. Answer of the Atchison, Topeka & Santa Fe Railway Company to complaint of the Municipal League, Case No. 970, filed with the Railroad Commission July 29, 1916.

4. Answer to the Los Angeles & Salt Lake Railroad Company to complaint of the Municipal League, Case No. 970, filed with the Railroad Commission July 28, 1916.

5. Application of the Southern Pacific Co. and the Los Angeles & Salt Lake Railroad Company, No. 3346, filed with the Railroad Commission Nov. 22, 1917 (omitting exhibits).

6. Decision of the Railroad Commission, No. 8901, rendered April 26, 1921.

7. Excerpts from applications for rehearing filed with the Railroad Commission by the Southern Pacific

Company, Atchison, Topeka and Santa Fe Railway Company and the Los Angeles & Salt Lake Railroad Company on May 10 and 12, 1921.

8. Order of the Railroad Commission granting rehearing, dated October 7, 1921.

9. Decision of the Railroad Commission of California, No. 9839, rendered December 6, 1921.

10. Excerpts from applications for rehearing filed with the Railroad Commission by the Southern Pacific Co., Atchison, Topeka and Santa Fe Railway Company and the Los Angeles & Salt Lake Railroad Co., on Dec. 17 and 19, 1921.

11. Order of the Railroad Commission denying applications for rehearing, dated December 28, 1921.

12. Petition of Southern Pacific Company for a Writ of Review filed in the Supreme Court of California Jan. 4, 1922 (omitting exhibits).

13. Petition of the Atchison, Topeka & Santa Fe Railway Company for a Writ of Review, filed in the Supreme Court of California Jan. 5, 1922 (omitting exhibits).

14. Petition of the Los Angeles & Salt Lake Railroad Company for a Writ of Review filed in the Supreme Court of California Jan. 5, 1922 (omitting exhibits).

15. Writ of Review issued out of the Supreme Court of California upon petition of the Southern Pacific Company, S. F. 10,111, dated January 7, 1922.

16. Writ of Review issued out of the Supreme Court of California upon petition of Atchison, Topeka & Santa Fe Railway Company, L. A. No. 7166, dated January 16, 1922.

17. Writ of Review issued out of the Supreme Court of California upon petition of Los Angeles & Salt Lake Railroad Company, L. A. No. 7165, dated January 17, 1922.

18. Return of Railroad Commission of California to Writ of Review issued upon petition of Southern Pacific Company, S. F. 10,111, filed with the Supreme Court of California February 6, 1922 (omitting pleadings, transcripts, and exhibits).

19. Return of the Railroad Commission of California to Writ of Review issued upon petition of the Atchison, Topeka & Santa Fe Railway Company, L. A. No. 7166, filed with the Supreme Court of California, February 6, 1922.

20. Return of Railroad Commission of California to Writ of Review issued upon petition of Los Angeles & Salt Lake Railroad Company, L. A. No. 7165, filed with the Supreme Court of California, February 6, 1922.

21. Minute Order of Supreme Court of California dated February 6, 1922, showing consolidation for hearing and decision of Southern Pacific Company vs. Railroad Commission; Atchison, Topeka & Santa Fe Railway Company vs. Railroad Commission; and Los An-

geles & Salt Lake Railroad Company vs. Railroad Commission.

22. Decision of Supreme Court of California rendered December 19, 1922, annulling decision of the Railroad Commission.

23. Orders of the Supreme Court of California filed January 18, 1923, denying petition of Railroad Commission for rehearing.

24. Remittitur issued out of Supreme Court of California in case of Southern Pacific Company vs. Railroad Commission, S. F. 10,111, dated January 22, 1923.

25. Remittitur issued out of Supreme Court of California in case of Atchison, Topeka & Santa Fe Railway Company vs. Railroad Commission, L. A. No. 7166, dated January 22, 1923.

26. Remittitur issued out of Supreme Court of California in case of Los Angeles & Salt Lake Railroad Company vs. Railroad Commission, L. A. No. 7165, dated January 22, 1923.

It is further stipulated by the parties hereto that in making this stipulation, the Southern Pacific Company, the Atchison, Topeka & Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company do not consent to the review by the Supreme Court of the United States, nor waive any right of objection or defense that might otherwise be available, provided the

entire record was presented to the Supreme Court of the United States with the petition for writ of certiorari.

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HUGH GORDON,
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Attorneys for Railroad Commission of the State of California.

Endorsed: In the Supreme Court of the State of California.

S. F. No. 10,111.

Southern Pacific Company, petitioner, vs. Railroad Commission, respondent.

L. A. No. 7166.

Atchison, Topeka & Santa Fe Railway Company, petitioner, vs. Railroad Commission, respondent.

L. A. No. 7165.

Los Angeles & Salt Lake Railroad Company, petitioner, vs. Railroad Commission, respondent.

Stipulation. Original.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1923

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, *Petitioner*, vs. SOUTHERN PACIFIC COMPANY (a corporation), SOUTHERN PACIFIC RAILROAD COMPANY (a corporation), *Respondents.*	No. 283
RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, *Petitioner*, vs. THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY (a corporation), *Respondent.*	No. 284
RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, *Petitioner*, vs. LOS ANGELES AND SALT LAKE RAILROAD COMPANY (a corporation), *Respondent.*	No. 285

SUPPLEMENTAL TRANSCRIPT OF RECORD

ON CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

In the Supreme Court of the State of California

Southern Pacific Company, *Petitioner*, vs. Railroad Commission, *Respondent*.	S. F. No. 1
Atchison, Topeka & Santa Fe Railway Company, *Petitioner*, vs. Railroad Commission, *Respondent*.	L. A. No. 7
Los Angeles & Salt Lake Railroad Company, *Petitioner*, vs. Railroad Commission, *Respondent*.	L. A. No. 7

CERTIFICATION.

I, B. Grant Taylor, Clerk of the above entitled court, do hereby certify that the attached documents, to-wit:

1. Excerpts from the transcript of testimony in Case No. 970 before the Railroad Commission of the State of California,

2. Copy of a certain contract between the Southern Pacific Company and the Los Angeles & Salt Lake

Railroad Company and the Pacific Electric Railway Company, attached as an exhibit to the application of the Southern Pacific Company and the Los Angeles and Salt Lake Railroad Company, No. 3346, filed with the Railroad Commission of the State of California November 22, 1917.

3. Stipulation defining record,

are true and correct copies of the documents on file in my office in the record of Southern Pacific Company v. Railroad Commission, S. F. No. 10,111; Atchison, Topeka and Santa Fe Railway Company v. Railroad Commission, L. A. No. 7166, and Los Angeles and Salt Lake Railroad Company v. Railroad Commission, L. A. No. 7165.

Dated, October....., 1923.

(Seal) B. GRANT TAYLOR,
Clerk of the Supreme Court of the
State of California.

(Endorsed): In the Supreme Court of the State of California, S. F. No. 10,111, Southern Pacific Company, Petitioner, v. Railroad Commission, Respondent; L. A. No. 7166, Atchison, Topeka & Santa Fe Railway Company, Petitioner, v. Railroad Commission, Respondent; L. A. No. 7165, Los Angeles and Salt Lake Railroad Company, Petitioner, v. Railroad Commission, Respondent. Certification. Original.

Before the Railroad Commission of the State of California.

The Municipal League, a voluntary organization of the citizens of the City of Los Angeles, State of California, *Complainant,* vs. The Southern Pacific Company, Atchison, Topeka & Santa Fe Railway Company, and San Pedro, Los Angeles & Salt Lake Railroad Company, *Defendants.*	Case No. 970
The Central Development Association of Los Angeles, a voluntary organization of the citizens of the City of Los Angeles, State of California, *Complainant,* vs. The Southern Pacific Company, Atchison, Topeka & Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, *Defendants.*	Case No. 971
The Civic Center Association of Los Angeles, a corporation of the citizens of the City of Los Angeles, State of California, *Complainant,* vs. The Southern Pacific Company, The Atchison, Topeka & Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, *Defendants.*	Case No. 972

The City of Pasadena (a municipal corporation), *Complainant*, vs. Pacific Electric Railway Company et al., *Defendants.*	Case No. 974
The City of Alhambra (a municipal corporation), *Complainant*, vs. Pacific Electric Railway Company et al., *Defendants.*	Case No. 980
The City of San Gabriel (a municipal corporation), *Complainant*, vs. Pacific Electric Railway Company et al., *Defendants.*	Case No. 981
The City of South Pasadena (a municipal corporation), *Complainant*, vs. Pacific Electric Railway Company, The Southern Pacific Company, The Atchison, Topeka & Santa Fe Railway Company, the San Pedro, Los Angeles & Salt Lake Railroad Company, and the City of Los Angeles, *Defendants.*	Case No. 983

APPEARANCES:

Gibbon & Shelton, for Municipal League of the City of Los Angeles, Central Development Association of Los Angeles, and Civic Center Association of Los Angeles;

Marshall Stimson, for Central Development Association of Los Angeles, and Municipal League of Los Angeles;

Seward A. Simons, for Central Development Association of Los Angeles;

Joseph Scott, for Los Angeles Chamber of Commerce;

John Munger and J. H. Howard, for City of Pasadena;

Albert Lee Stephens, Howard A. Robertson and Chas. S. Burnell, for the City of Los Angeles;

T. D. McFadden, for City of San Gabriel;

William Hazlett, City Attorney, for City of South Pasadena;

Alfred Barstow by William Hazlett, City Attorney, for City of Alhambra;

A. S. Halsted, for Los Angeles & Salt Lake Railroad Company;

C. W. Durbrow and George D. Squires, for Southern Pacific Company;

E. W. Camp and U. T. Clotfelter, for The Atchison, Topeka & Santa Fe Railway Company;

Frank Karr and E. E. Morris, for Pacific Electric Railway;

R. A. Rowan, for Los Angeles Realty Board;

Fred P. Gregson, for Associated Jobbers of Los Angeles;

W. H. Workman, Jr., for Los Angeles City and County Viaducts Association;

Will D. Gould, President, for Northwest Association;

Charles W. Lyon, for City of Santa Monica and City of Venice;

Herbert J. Goudge, for Business Men's Association of Los Angeles;

W. C. Shelton, for Business Men's Co-operative Association;

R. W. Kelly, for Brooklyn Avenue and Malabar Improvement Association.

Los Angeles, Cal., September 15, 1916,
10 o'clock A. M.

Commissioner THELEN. The Railroad Commission will please come to order. This is the time and place set for the hearing in seven proceedings, Case No. 970, Municipal League of the City of Los Angeles against the Southern Pacific Company and others; Case 971, Central Development Association of Los Angeles against Southern Pacific Company and others; Case 972, The Civic Center Association of Los Angeles against the Southern Pacific Company and others; and then there are four cases numbered respectively 974, 980, 981 and 983 brought by the City of Pasadena and the City of Alhambra, the City of San Gabriel and the City of South Pasadena, respectively, against the Pacific Electric Railway Company and others. (Tr. pp. 1-3.)

Commissioner THELEN. * * * If there is no objection, the evidence which will be taken in the seven proceedings will be considered as taken in these other proceedings if instituted, and vice versa, so that all the evidence may be considered in all the proceedings and either a single order rendered or possibly or some interlocutory orders. In any event, we will have the orders issued in

the consolidated proceedings. There being no objection, that will be the course of procedure. (Tr. 134.)

(Los Angeles, Cal., July 24, 1917, 10 o'clock A. M.)

* * * * * * *

Mr. SIMONS. As we understand the record now, the proceedings will be carried on under the general allegation that the City of Los Angeles now in its public streets is suffering from the evils of grade crossings, which is our first allegation, and that there should be a separation of grade. Following that general view, the Development Association considers, connected with that and as inseparable from it, the treatment of the general terminal facilities of the City of Los Angeles. In other words, as has been stated by I think one of the Commission in some decision, a comprehensive plan which involves the change of grade, and the elimination of grade crossings, the lessening of danger, means that the proper facilities, the union station, as it has been called, a passenger station and terminal station of freight character, are so involved that they must in a large measure be treated as the same proposition, or as corrolaries of it. (Tr. 141.)

* * * * * * *

SAMUEL STORROW,

a witness called in behalf of the Central Development Association of Los Angeles, complainant, having been first duly sworn, testified as follows:

Direct Examination.

Mr. SIMONS. What is your profession, Mr. Storrow?

A. I am an engineer.

Q. How long have you lived in the City of Los Angeles?

A. Off and on for about 25 years.

Q. What is your professional training and schooling?

A. Railroad construction, heavy construction, and in valuation and reporting upon public utility properties.

Q. How long have you been a student of the railroad or transportation situation of the City of Los Angeles?

A. About 7 or 8 years. That is, directly connected with it professionally.

Q. State to the Commission generally what that has covered during that period up to the present time?

A. At the time when the agitation for the buildings of Arcade station was the point at issue some of the members of the city council, particularly Mr. McKenzie, now dead, asked me to advise with them informally upon the feasibility of separating the grades of the streets and the railroads. That was the result of a good many previous consultations. And I then, at that time, and since that time, have continuously been making a study and determinations in respect to the separating of the grades of the steam railroads and the interurban railroads and the city streets. The problem originally came up solely as to Alameda Street. I advised the members of the council at that time, especially Mr. McKenzie, that one crossing or one street could not be separated from a general design, that in order that a solution should be made it was necessary that a design should be prepared that could be worked at systematically, that many of the unimportant crossings

should be studied sufficiently so that a comprehensive design could be made which could start to apply now and go on as the city grew and its increases came. That, therefore, the first essence was a comprehensive plan covering the entire situation of grade crossings, not merely on Alameda Street or any individual dangerous crossings but all crossings and on all streets. That, therefore, the first element was the preparation of the general specifications and the general principles,—first, the dangers we encounter by the existence of crossings, and second, the general principles that we must apply equally to all crossings. And that work has gone on continuously until it is—am I to go on?

Q. Just finish that sentence and I will ask you another question.

A. That work was to go on then continuously, and has gone on continuously until the making of what is called the engineers' report, now before the Commission, the report signed by Mr. Hamlin, city engineer, Mr. Howell and myself, and the present agitation, the present proceedings here this morning,—gone on continuously perfecting the principles on which grade crossing improvements must be made and endeavoring to judge all the different schemes that have been brought out, to judge them all by the canons of those principles. (Tr. 161-163.)

* * * * * * *

Commissioner DEVLIN. What is the location of the plaza with reference to streets?

A. The location of the plaza with reference to streets is that it is somewhat in the northern part of the town,

that Main Street and Los Angeles Street, two of our very important streets, lead directly into the plaza.

Commissioner DEVLIN. And near what?

A. Other streets, for instance, as Sunset Boulevard, which comes in from the west, from Hollywood and San Fernando Valley, and all those sections, leads directly into the plaza. Alhambra Avenue is the main artery from the valley so-called, the valley leading into San Bernardino, Alhambra, just off the confines of this map (indicating), comes down to and would connect with the plaza if it were not completely occupied by the Southern Pacific, to such a degree that it doesn't even have a bridge across the river.

Mr. SIMONS. What is the location of Hill, Broadway and Spring Streets?

A. Spring Street comes northward and connects with Main Street just before reaching the plaza. Broadway, paralleling Spring and Main, comes north, passes through the tunnel and connects with Sunset Boulevard, and so connects with plaza. Alameda Street, which is immediately recognized on this map, is a great central street in the plan of the city, a Broadway or Market Street, the great diagonal street of the city runs directly into this proposed terminal. Anybody from that street would almost step onto the platform of a train. It is the most diagonal street of the city, one of the widest streets of the city, I believe, exceeded only by two, one a purely residential street and the other Alhambra Avenue, which, as I say, is blockaded and not used as a street.

Q. Mr. Storrow, you mentioned the streets extending to the west but did not say anything about Hill Street. Will you kindly, in order that the record may be complete, tell us about Hill Street?

A. Hill Street comes northward, passes through the tunnel and brings the Pacific Electric tracks onto Sunset Boulevard, which, in turn, connects with the plaza; by turning in the other direction, you can come forward on Hill Street, and going through what is called the Broadway tunnel, reach the plaza direct. In other words, the main arteries—or, one more point: From the lower side of the map, that is, from the east, the entrance of the Valley Boulevard, which should really run on Alhambra Avenue, does not so run because it is closed, but runs across diagonally to Mission Road and crosses the bridge either at Macy Street or Aliso Street. At the present time, owing to somewhat defective pavement, the normal business access to the city from the Valley Boulevard by way of Mission Road would be over Macy Street bridge, but right at the very present moment just for a few days the pavement is torn up at that point, and therefore, for a few days the traffic is diverted and passes over the Aliso Street bridge, so that Aliso Street bridge and the Macy Street bridge are collectively doing the work of bringing in all the traffic which comes from Alhambra, from San Gabriel, Pomona, Ontario and San Bernardino, and all what we call here the valley,—a very, very large traffic of suburban business. The Aliso Street bridge also brings the present Pacific Electric red car line and the Aliso Street bridge I think you will admit, if you have judicial

knowledge, has been the center of one of the famous accidents. It is, incidentally, one of the most difficult crossings, one of the most dangerous crossings, from an engineering standpoint, unless a very drastic solution is applied, in which case it is an exceptionally easy location for the reason that the hills, which are not shown on this map as hills, are an extremely important part of the explanation of the situation in the city. The park on the west side of the river occupies all the part of this map shown here (indicating) and comes down so closely to the Southern Pacific track that as a fact North Broadway, shown here (indicating), carrying the yellow car lines, has just room enough to be built in between the Southern Pacific tracks and the hills. In fact, it is cut into the hills. There wasn't room for it the way the Lord made it and the Southern Pacific made it, but the City of Los Angeles changed that design somewhat and built it in on the other side. Just below the map is the high ground known by the generic name of Boyle Heights, the east side of the city. It is a somewhat steepy bluff and somewhat high, rough, rolling piece of ground, which is of such character that it is topographically prohibitive to steam railroads. Between that hill and the river the Southern Pacific shops are built in. So that, looking at it from the point of view of the hills, the hill on the west side comes to the Southern Pacific tracks, the Southern Pacific tracks come to the river, the Southern Pacific tracks go from the river back to Boyle Heights hill and the northern end of the city, and the valley of the Los Angeles River is either completely filled by Southern

Pacific tracks or by the river excepting in so far as the Santa Fe and the Salt Lake are built down along the levee, which at the time when the Southern Pacific tracks were built was an unknown engineering solution and has come up since. All the rest of the city, extending practically from the—oh, say about First Street, so far as shown on this map, is practically so level that, so far as the elevations and grades are concerned, there are no obstacles as to grade, with only one very interesting and important exception. This corner of the plaza, (indicating) the west side of the plaza, on Main Street, is about a little less than 25 feet vertically above Alameda Street. I mean to say it is about a scant 25 feet higher. The plaza now slopes from this highest corner (indicating), that is to say, its western corner at Main Street, somewhat gently across the plaza and then somewhat abruptly into Alameda Street. That is an unusual situation. That is to say, that is the last limit of the jump-off of the hill, where the last limit of the hill jumps off into the flat of the industrial section of the city, and will be frequently referred to hereafter, and therefore, it is a very important thing to bear in mind.

Q. You will notice upon the lower portion of the map the words "To Pasadena" and the prolongation of the red lines. What does that indicate?

A. That indicates the location of the Pacific Electric system coming in from the valley systems, not merely Pasadena but the valley systems, San Gabriel, Alhambra——

Q. Name the different cities and towns which are fed and served by that track.

A. I might hurt somebody's feelings by leaving out his pet town, but in practice it is all the towns from San Bernardino to Los Angeles, San Bernardino, Ontario, Pomona, San Gabriel, Pasadena and all the towns in the northern part of the valley, practically all the towns that are fed by the Southern Pacific and the Santa Fe between Los Angeles and San Bernardino.

Commissioner GORDON. But you didn't name Cucamonga.

Mr. SIMONS. Cucumber, did you say?

Commissioner GORDON. Cucamonga.

A. It is one of the lines carrying the greatest number of cars, and I understand the figures are to be presented later showing to you the number of cars which come in over that red line, the number of cars which pass over the present Aliso bridge, the number of cars which pass over a grade crossing right at this point (indicating), the intersection of the Salt Lake green railroad and the red Pacific Electric car lines.

Mr. SIMONS. You have placed your pointer upon the intersection of the Salt Lake road with the Pacific Electric track on the east side of the river?

A. At the east end of the Aliso Street bridge.

Q. What is the condition on the west side of the river, as it crosses the Santa Fe?

A. At the crossing of the Santa Fe——

Q. Is that a grade crossing?

A. ——is a grade crossing of the Pacific Electric Railway and the Santa Fe. It is a double crossing

because at that point the Santa Fe have two roadbeds; they have one right at the bank of the river, more generally used for freight, and another one a couple of hundred feet further to the west, on a straight line, more generally used for passengers; but both of those crossings are so close together that the situation might be called one compound grade crossing.

Q. Further to the west is the crossing at Alameda Street at grade?

A. That is a crossing at grade of the Southern Pacific Railroad and the Pacific Electric car lines.

Q. Describe generally upon the record the accessibility to the Plaza Station, so-called, or the proposed terminal there, through Aliso and Macy Streets.

A. Through Macy Street are yellow car lines running each way, run on two sides of the proposed terminal. Macy Street is one of the busiest streets, a very wide street,—one of the widest, virtually level. I have forgotten the exact figures, but Macy Street, contrary to general public opinion, does not slope toward the river but away from it. Alameda Street is lower than the bank of the river but very little, only a couple of feet. Virtually it is a level street down which the yellow car lines go. They go completely along one side of the proposed terminal; turning, as they now do, at Main Street, they would go along the other side of the terminal and connect at the plaza with all cars. On Aliso Street there is no yellow car lines,—only the red car line, that is, the Pacific Electric. At the plaza itself there is a constant stream of yellow cars whirling around the corner at the plaza. It is one of the most

well fed districts in the city in respect to cars, especially with the two types of cars which are now used in the city business, that is, the local car connecting all lines and the through car going to the ultimate edges of the city limits. In other words, the plaza today is one of the best fed points of the entire yellow car system, both as to local cross-town and through cars.

Q. I call your attention, Mr. Storrow, to San Pedro Street upon this map. Will you briefly tell us the use which is made of that and its relation to this proposed terminal.

A. San Pedro Street, as shown here correctly, is not a real straight street but a somewhat winding street running approximately from the plaza systems southwesterly. It goes on to the city limits, and under changes of name, goes on to Los Angeles Harbor. San Pedro Street is now occupied by a system of car tracks. One of the ownerships of those car tracks on San Pedro is what is called the Municipal Railroad, built and owned by the City of Los Angeles, projected to reach from the important business sections of Los Angeles to the harbor. A considerable section of that has been built and has been leased and is now used and occupied by the Pacific Electric. Therefore, the line as shown here is a Pacific Electric red line, because it is occupied only by Pacific Electric cars. Further down San Pedro Street, as we go southwest, the three rail system comes in and the yellow cars also occupy the street. Now, San Pedro reaches, as I say, from the harbor, under one name or another, to within one block of the plaza. It has the right of way—I believe the word

is correct—for Municipal Railroad and is occupied by the Municipal Railroad at the present time and reaches the plaza except for this one block (indicating), and as a matter of fact, the piece of property through which it would go if continued to the plaza is already the property of the city,—the fire department.

Q. The block in white directly north of the termination of San Pedro Street at Aliso, which you say is the block which separates the plaza from the San Pedro Street outlet, how is that occupied?

A. Right opposite the end of San Pedro Street facing right down San Pedro Street is one of the large fire department houses.

Q. City property?

A. City property. Back of that are some very dilapidated improvements.

Q. What is the relation of Central Avenue to San Pedro Street and the terminal?

A. Central Avenue is one of the streets which is essentially parallel to all the streets on the west side of Alameda Street, like the west side of Market Street in San Francisco. The main streets run diagonally into the Broadway of Alameda Street at an angle of about 30. Central Avenue comes down and would connect with that were it not blockaded by the presence of the Arcade Station. Being blockaded by that, it turns slightly and still comes through and connects with the plaza, until it runs into another system of Southern Pacific tracks two or three blocks away.

Q. But directly to the west of it, as it now terminates in Jackson Street, a short half block, it connects with San Pedro Street, doesn't it?

A. Yes sir. In other words, it easily leads into San Pedro Street, or into Alameda Street, which, in turn, lead directly to the proposed terminal.

Q. Withdrawing your attention from a description of the map but particularly calling your attention now to the grade crossings and their character, will you, from the north, proceeding south, as against the crossings of the various streets, name the grade crossings?

A. The principal grade crossings?

Q. The principal grade crossings.

A. The principal grade crossings starting from the righthand end of the map, north end of the map, and coming to the lefthand end, which is going south, are the many crossings, of the Southern Pacific system, which first begin to come into prominence at San Fernando Street. San Fernando Street is one of the broad streets leading from the Pasadena section, north section, into the city. That street becomes pretty well occupied by tracks of the Southern Pacific main lines, switching and storage lines, from about Ann Street, until after you pass Alameda Street, pretty thoroughly occupied. To mention the individual crossings is hardly necessary where there are so many of them. Then, from that point going on south down Alameda Street, Alameda Street is occupied by such longitudinally throughout its entire length until Alameda Street passes out of the city limits. It is occupied the entire distance both as to main line and spurs and in use as to through passengers,

local passengers, through freight, local freight, switching and warehouse delivery. It is occupied in every way that a track can be occupied, as a main line or as a delivery of car load lots. The worst crossings of that probably are the San Fernando Street crossing, the Main Street crossing, and one of the dangers of the Main Street crossing is because Main Street at that point is coming down grade from the plaza, making it extremely difficult, especially in wet weather, either to stop an automobile or street car. And parenthetically, I might say the situation in Los Angeles as to slippery streets is slightly unusual. Heavy as our rains are here, when they get here, they start in by being very modest in the early fall, and at that time the streets are well coated with dust, ground excessively fine, and excessively slippery. The next bad crossing comes at the Macy Street crossing, which again is doubly dangerous on account of the steep pitch coming from the west. That is a yellow car line crossing. Then the next dangerous crossing is Aliso. That is not such a steep pitch but rather gentle, because there is stoppage room on the west side for a car if it is under good control, but its danger is increased from the fact that it is crossed constantly by three car trains, that is to say, three car trains of the Pacific Electric, very large interurban cars, usually endeavoring to make as good time as they can, because the passengers naturally are impatient to make good time. Personally, I have charged into the gates down there when I couldn't get my car stopped. Going then further westward, First Street becomes the next excessively dangerous crossing, on

account of the very large volume of traffic. It is today one of the principal lines of approach from the north and west parts of the city to the Santa Fe Station, and it has a very large traffic on that account. It also has a large traffic for the reason that it is one of the few fairly possible streets connecting with the east side of the city, with Boyle Heights, and it presents a very unusual condition in that it has a bridge over the railroad. In other words, by going over First Street and taking chances on the Southern Pacific crossing you can avoid the Santa Fe and Salt Lake crossing, by virtue of a bridge there, and therefore, it has a very large amount of traffic, and is therefore dangerous. Going still further west, Second Street and Third Street present the next two important crossings. Second Street is dangerous mostly to street cars because the vehicular traffic has a tendency to be rather of the truck delivery variety or else automobiles going to the Santa Fe station who recognize that it is such a dangerous crossing that they take extreme pains to guard themselves against it. In other words, it is not a very generally crowded crossing. But at Third Street you get to another crossing doubly dangerous because it is one of the main feeds to the Santa Fe station from the west, from the entire city, one of the main feeds to the Santa Fe station. It has a very heavy traffic on that account. And it also is so close to the switches leading into the Arcade station that it is extremely dangerous, for the reason that trains coming out from the Arcade station are not particularly noticeable until they are almost upon you, and trains are in the yard moving at

all times, you never are sure what is coming out until it gets out and that is a little bit late to stop quick. Then, there are no particular dangerous crossings until we come to the Fourth Street crossing, which passes what colloquially we might say is through the Arcade properties; that is to say, between the Arcade passenger crossings and the Southern Pacific team yards, as shown here on the map, crosses a multitude of tracks. And there again I might remark that that crossing is so very dangerous that it is fool safe; anybody who goes through with his eyes open risking whatever he has, and depending upon his luck and ingenuity to get through safely.

Q. Mr. Storrow, in respect to the block between Central and Alameda and from there directly north of the Arcade depot, is that used for making up trains?

A. That section is used constantly for switch engines, going in and out with cars, for trains, locomotives, line locomotives which are wanted going up there with trains. The next really dangerous crossing is——

Q. Just a moment. Before you pass onto that, I want to call your attention to Vincent Street again and ask you into what it leads and what it is.

A. Fifth Street leads from the business portion of the city down to the river.

Q. Fourth Street?

A. Fourth Street. Leads from the business center of the city down to a fan on the Southern Pacific tracks, where they fan out from Alameda Street entrance into the Arcade station.

Q. Is that a thoroughfare running to Boyle Heights east of the river which is reached in that way, and if so, describe it.

A. It is a legal one, I believe. It is a street open to the public and supposed to be used by the public for the purpose of reaching Boyle Heights. It has, however——

Q. Now, Fourth Street at that point where it adjoins Vincent Street on the map becomes the main avenue leading to the bridge over the Santa Fe tracks and to the Salt Lake property?

A. Yes sir.

Q. As shown there on the map?

A. As shown on the map, the viaduct crossing the Santa Fe tracks in brown, the river in blue and the Salt Lake in green, and coming down again on the ground after it passes the Salt Lake yard, just as it starts up the hill again, and as I have already said, the Boyle Heights plateau is just south of this map. It is, roughly speaking, I should judge, is 50 feet above the flat.

Q. Now, proceeding south from that, what is the next street?

A. I would like to speak of Fifth Street for a moment. That is one of the main entrances of the public to the Arcade station,—comes from a very important part of the city, pass the Pacific Electric Railroad station by missing it only one block, and directly to the Arcade station, and on that map there it terminates at that point (indicating). I understand that, as a matter of fact, it goes on. That problem has been submitted, is under negotiation now with the Board of

Public Utilities as to certain overhead crossings to be built through the Arcade station and over the tracks as a part of the agreement made at the time that street was closed. In other words, Fifth Street was never closed, allowed to be closed to certain lines of traffic only. Otherwise, Fifth Street is terminated by the presence of the Southern Pacific Arcade station.

Mr. STEPHENS. Proposed plan is for a foot bridge?

A. I understand that foot bridge negotiation is——

Mr. STEPHENS. Now before the Council?

A. All right, I admit it—now before the Council.

Mr. STEPHENS. I feared the Commission might misunderstand that was for an elevated vehicle road.

A. It is not an elevated vehicle. It is a foot bridge. I understand the main point of discussion which was interfering with it is in the nature of how to get down from this foot bridge on to Alameda Street, and that point is one of the points which we will take up later in discussing the elements which go into it from the standpoint of safety of grade crossings,—this landing of this foot bridge.

Mr. STEPHENS. May I add that that was sent back to the Council within the week because of this very hearing, feeling we should not take affirmative action until we know something about this situation as it is developed in the hearing.

A. I am glad to get Mr. Stephens' statement as to that.

Mr. SIMONS. Now Sixth Street.

A. Sixth Street is where the tracks of the Arcade station, or I might say, they fan out on to Alameda

Street just as Third Street fans in—they fan out. Of course, that means that switch engines, trains, locomotives and cars and all sorts of things are not simply running head on but are backing in, and doubly so because at this end we are approaching the coach yard of the Southern Pacific where the coaches are held in abeyance until wanted in the Arcade station. Therefore, the connection between the Arcade station and this coach yard is somewhat different from almost any other situation we have in the city, and there again is the matter which we have already referred to, I am afraid, in most vitriolic terms,—making it as strong as we can at a later period, because it is a point where our specifications in which the engineers believe they are asking the essentials of grade crossing improvements which are most flagrantly violated. There is this constant connection between the Arcade station and the coach yard of the Southern Pacific. Of course, there are the main line trains going to and fro, backward and forward, and under all sorts of conditions, fully manned as to legality of the crew manning the coaches, but rather scantly manned as the public sometimes sees it when they back in and the locomotive is on the other end. Incidentally, the matter of crossing there is such that the constant throwing of the switches, constant requirement of open rails for handling the switches, means that the physical structure of the pavement is very dangerous and a difficult thing with the likelihood of a foot or an automobile wheel getting into it. I have had a great deal of occasion to cross that crossing and am very familiar with it. The next really serious

crossing is the Seventh Street crossing. Seventh Street is one of the principal streets connecting the city with the Boyle Heights country and is becoming more and more important as the center of the city is moving southward, until to day Seventh Street has a very large traffic, a rapidly growing traffic, and there again at this point is the point where the switching, as distinguished from main line use between the Arcade station and the coach yard, is in very conspicuous evidence. From there on down the crossings are what you might call nominal crossings, barring only the Ninth Street crossing of Alameda Street. The Ninth Street crossing is an important crossing for the reason that the Santa Fe Avenue shown here on the map has become a very important industrial street. Some of the largest industrial properties are now already moved or are moving down into the flat country around Vernon and then on into Huntington Park, so that Santa Fe Avenue has become an exceptionally important industrial street, doing a very large industrial business. That also is one of the best automobile routes going to Long Beach or out in that neighborhood. It is the street on which the Vernon County Club exists, and without wishing in any way to speak improperly, I would say that the circumstances of such properties as that renders a crossing between such a place and the city doubly dangerous. Beyond Ninth Street the crossings are fairly nominal. The Santa Fe then has certain crossings, very few of which need to be spoken of. The most dangerous Santa Fe crossing is the Macy Street crossing of the Santa Fe, at which point

I myself have been thrown out of a street car by collision with a Santa Fe train—not a Santa Fe but with a Salt Lake train. At that crossing—I might speak of the two at the same time—the Santa Fe is on one side and the Salt Lake is on the other there and both are grade crossings, and while the Santa Fe crossing can easily be seen on approaching, it is none the less dangerous because I believe it was pretty well understood that for that crossing to be safe it need not merely be safe so that a careful and intelligent driver can get over safely but it must be fool proof. The double crossing of the two Santa Fe tracks and the Salt Lake tracks render that a crossing where a good deal of care is necessary. Now, as soon as an exceptionally bad piece of road, of pavement, two blocks of it, is eliminated in this vicinity that will immediately spring into great prominence as an out of town artery leading to Pasadena and up in that direction.

Q. In regard to Macy Street, have you investigated any accidents at those crossings which you have indicated?

A. I go out over the Salt Lake crossing myself a great deal.

Mr. SIMONS. I will ask the attorneys of the defendant companies if they are willing to give or will include in their report the circumstances of the accident happening within the last three weeks at Macy Street.

Mr. KARR. That company, I understand, is not a company defendant to these proceedings.

Mr. SIMONS. What company was it?

Mr. KARR. I don't know, but we don't operate over that street.

Mr. HALSTED. The Los Angeles Railway, I presume.

Mr. KARR. I never heard of the accident. It is not on our railroad.

The WITNESS. The next crossing is Aliso Street crossing which is similar in many respects to the Macy Street crossing except a great deal more dangerous. It is a great deal more dangerous for two reasons, the two tracks of the Santa Fe Company making that crossing a little bit more complicated, a little bit more compound, and the district is a little bit more built up, which makes it more difficult to see the approach, and the steam line of the Santa Fe approaches essentially at right angles, and the Salt Lake trains, on the Salt Lake side is beginning to arrive at the point where switching is going on. It is also complicated by the fact that the red car lines of the Pacific Electric enter upon that and enter upon it with a curious type of bridge, so that there is unusual necessity of crossing not merely the steam lines but also the electric lines. The pitch and the approach from the west is just enough to go in there a little bit more rapidly than we perhaps realize. After we get further down we have no very serious situation at First Street, because there is a bridge at First Street over both the railroads.

Q. Under the present construction?

A. Under the present construction, and incidentally, I may parenthetically say that the bridge is in such condition right now that it must be entirely rebuilt very soon. It is recognized as approaching the end

of its life, and from an operative standpoint it is exceptionally steep. I have stood on the bridge myself and seen a fire engine try to get up and not get up. Fourth Street, of course, also has a viaduct similar in all respects except that of steepness. Then we come to Seventh Street. Seventh is one of the crossings which is going to be greatly in evidence in this hearing. Seventh Street is a grade crossing of two main lines of the Santa Fe on the west and the main line of the Salt Lake on the east. There are two lines of the Santa Fe. It is also a crossing where there is an incline approaching the crossing making it very dangerous. There is then the Salt Lake, so that in crossing that you can be held up by any one of three main lines of traffic.

Commissioner THELEN. We shall now adjourn until half past one.

(Whereupon at the hour of 12 o'clock M., a recess was taken until 1:30 o'clock P. M.) (Tr. 166-185.)

SAMUEL STORROW, recalled

Direct Examination (resumed).

Mr. SIMONS. When we adjourned, Mr. Storrow, we were discussing the Seventh Street crossing, as I remember it. Will you describe the condition there at the Santa Fe crossing on Seventh Street.

A. The Seventh Street crossing is made by Seventh Street crossing the river, and on the western side first crossing the tracks of the Santa Fe and on the eastern side thereafter crossing the tracks of the Salt Lake, all those crossings being at grade, but the street at

that point is not a level street. The rise from Alameda Street to the first crossing of the Santa Fe is about 7 feet in distance from Alameda Street to the Santa Fe. After that, it rises about 7 feet more between the first Santa Fe track and the floor of the bridge in that relatively short distance, making in the nature of a slightly steep pitch onto the bridge at the very point of the steam railroad crossing. Now, of course, in automobile use, slowing down for a danger and endeavoring at the same time to get increased power out of your car is a matter of great difficulty unless you shift the gear, which you are not likely to do unless you think there is some special emergency in the nature of a danger, and therefore, that very fact of a slight pitch there magnifies the danger in actual practice. Now, we cross the bridge and then come to the Salt Lake crossing. The Salt Lake crossing on the east bank of the river is substantially the same height, same elevation, above sea level as the upper crossing of the Santa Fe, and only very slightly below the bridge crossing. Practically the first crossing of the Santa Fe, that is, the crossing next west of the bridge, the bridge itself, and the Salt Lake crossing east of the bridge are at what is practically a level. If then we go still further toward the east a distance of 300 or 400 feet, we drop 6 or 7 feet more, so that the conditions at Seventh Street bear strong similarity on both sides of the river. That is to say, there is a somewhat steep pitch right at the crossing. I don't mean to the inch, but as they cross the railroad rights of way there is a sharp pitch. That was brought

about so that the top of the bridge should be sufficiently high above the river to give the necessary underpassage for flood purposes. In other words, that the channel of the river, contracted by the building of the piers, should still be large enough to carry the volume of water, and the top of the bridge should be essentially level with the tops of the levees on each side of the river. To get at it in still different form, those are critical elevations and imposed upon that condition from that situation by the fact that the river is the primary object of the situation. We have got to cross the flood. The levees have been built based on the flood levels, and the bridge has been built based on the levees. As I say, in each case it slopes slightly down, and consequently those elevations at Seventh Street work out as obligatory elevations imposed upon it by the nature of the case. And therefore, if grade crossings exist at those points, those elevations are fixed—cannot be varied much one way or the other. Now, if we take that into account and arrive at the element of danger at present at Seventh Street, we may do so by making a quick comparison between the Seventh Street and the condition of the Pacific Electric crossing at Aliso Street. At Aliso Street there is a drop of 5 feet from the river bank going westerly in the first short distance there. From the eastern side there is not a drop but a rise. In other words, coming down Aliso Street grade, coming down the hill from the Boyle Heights terrace we come down hill continuously to the bridge, cross the bridge and then make another little drop to such a degree that the

grade at Alameda is about 7 feet lower than the river bank. There is a drop away from the river and not towards it—something very common to semi-desert streams.

Commissioner GORDON. What is the distance to the river?

A. The total distance is a couple of thousand—2300 feet to be exact. No, I am wrong. It is more; it is nearly 3000.

Mr. SIMONS. Drawn to a scale 200 feet to the inch?

A. Drawn to a scale 200 feet to the inch. I haven't got the scale here.

Commissioner GORDON. That is all right. I just wanted to get an idea of it.

A. And of that, the greatest drop is right at the western approach. There again those elevations are critical elevations. It has been worked out by the engineers that the maximum flood of the river, of which we have fairly accurate knowledge, due to floods which have gone down the river at past times—I was here at the flood of 1889, the famous flood,—was brought out here at that time for the purpose of studying that flood and its marks, which were then perfectly fresh. I was here the next day and I have been here since. We have made a very careful study of those floods. I know that there is a slight difference of opinion among the engineers because the data is not positive. The engineers think the greatest flood which has gone down the Los Angeles River, those that want to put a very low figure on it put it at 30,000 second feet. Those who want to put a very large figure say about 50,000

second feet. Those who have endeavored to get actual measurements and work them out put it at about 40,000 second feet by arithmetical computation and reasoning. Consequently, when we say 50,000 second feet is greater than the greatest flood of which there is any evidence either by the marks on the shore or by the geological structure of the banks, which is, of course, by all odds the safest evidence—when we say the greatest flood that has ever come down the Los Angeles River is less than 50,000 second feet, we make 50,000 second feet the amount for which we have to prepare and provide. That being the amount for which we have to provide it is not a difficult calculation to arrive at the height necessary. That again establishes here, as it did at Seventh Street, critical heights which we must be prepared to cross the floods. Those of you who have not been here at flood time must realize that we also have flood waters on Alameda Street, and as I say, Alameda Street is some 6 or 7 feet lower than the river. It is clear then that that situation must be taken into consideration. We have to bear these things in mind in determining the extraordinary—the critical points of elevation, points that cannot be changed because—to interchange them for one purpose we bump into the fact that they are tied up by natural causes, floods and other matters, over which we have no control and over which your honors have not jurisdiction. So that we have at Seventh Street then, the crossing of the double line of Santa Fe at which we cannot make any material change of the bridge across the river because the flood has determined that, and if we desire to pro-

tect ourselves by improving the grade crossing at those floods, we have got to recognize the control point of the head of the flood and the area of the water which are pretty well determined before we get to it and over which we have very little control.

The Ninth Street crossing I don't care to speak about. It is self-evident. As I say, it differs in a way, but with the development on the east side, which has not yet reached the stage of traffic so that it has become very great. It simply exists and it is the same condition with Seventh Street, Macy and Aliso, so that the conditions, the danger conditions or likelihood of accident which exists at Ninth, Seventh, Aliso and Macy are identical so far as danger conditions are concerned and complicated only by structures which may impede or interfere with the seeing of the danger before you reach there or the avoiding of the danger by some unusual little hill or difficulty which makes going away quickly a difficult matter.

Mr. SIMONS. From that last answer we infer that from the accidents which have occurred, at least, at the Aliso Street bridge, with which you are familiar, and the other grade crossings in which you have taken part in the investigation of this matter, that those conditions exist and are common to other grade crossings that you have referred to in your testimony?

A. That is it exactly.

Q. And the points of danger which you have described in the one case would be applicable to all of that character?

A. Similar conditions apply in all cases looking towards similar dangers.

Q. What is its relative importance as communicating rapidly between east and west side, taking Seventh Street, for an example?

A. Seventh Street is rapidly increasing in volume of traffic, is becoming now a very important crossing from one side of the river to the other. I have already said that Aliso and Macy bump so suddenly into the hill on the east side that for heavy traffic coming up on the east side it is very difficult and for communication is not satisfactory. The same thing applies to North Main Street, anybody desiring to get into the Boyle Heights country is away off his line of approach at North Main, whereas, Seventh Street feeds almost directly into the Boyle Heights country and is very rapidly increasing in traffic, not merely as to the traffic of the streets, passengers and automobiles, but for similar reasons the street car traffic. (Tr. 187-194.)

* * * * * * * *

Q. What is the advantage, generally speaking, in respect to the entire portion of the city and the whole grade crossing problem on the location of the terminal station to the north as against the southern or further southern location?

A. The principle of it is that the main roads coming into the city from the north actually come together at the point indicated, the crossing of Alhambra Avenue and the river, actually come together at that point. If we could keep the tracks along the river

bank and not elsewhere, then it is clear that there would be a less number of streets crossing those tracks, for the reason that there are less streets crossing the river in a given mile. In other words, there are seven streets crossing the river within the limits of this map. In a similar distance along any other place, as, for instance, Alameda Street, there are a great many streets crossing the tracks. Speaking in a diagrammatic way, if the tracks could be kept near the river there would be less occasion for crossing the tracks, and because it is necessary to build a bridge across the river at those seven crossings, which we hope will increase in number, then the bridge that crosses the river by a moderate amount of continuance or extension would also be the bridge which crosses the track. We would have less crossings and greater convenience of making them. Now then, in direct comparison if we should take up the entire system, whether we take up the spur track like the Santa Fe Alley or whether we take up the main line like the Alameda Street, we at once see that if we can take those tracks off the map we have improved the grade crossings by the most effective method known,—we have done away with them, by doing away with their need. If a grade crossing is a necessity I presume it must exist. If it is not a necessity it must defend itself. If we can so locate a union station at the proposed place here, or plaza terminal, so that all the service can be given south of that place without going on the street, we think we have

provided a scheme for the improvement of grade crossings by their total removal. (Tr. 199-200.)

* * * * * * * *

Q. Speaking of the difficulties, especially with regard to grade crossings, as you approach from the north and make this proposed connection with Alhambra branch of the Southern Pacific, what grade crossings are there?

A. Grade crossings on the purple line.

Q. What grade crossings do you leave by this change?

A. None.

Q. What effect has it upon the general situation of the other railroads, if the tracks are removed and what improvement generally is effected in that way as to all that traffic which you have described?

A. I believe that in that connection, if this scheme be carried out, with the aid of the Commission in helping us over some minor difficulties, especially the matter of jurisdiction, I believe it would remove from the streets of Los Angeles all grade crossings, every single passenger car loaded or unloaded on a train or separately, which now goes over any grade crossing in the City of Los Angeles as shown on this map. That it would remove from the streets of Los Angeles every single freight train, not counting the spur track deliveries, which now go over a crossing in Los Angeles. That it would leave remaining in the City of Los Angeles not a single grade crossing. (Tr. 203.)

* * * * * * * *

Q. You are familiar with the location of the various passenger stations of these transcontinental roads, their location?

A. Yes sir.

Q. What is their relation to each other as far as methods of communication are concerned?

A. They do not connect with each other directly by physical structures, and so far as I know, they do not connect with each other by street car systems, excepting the Salt Lake and the Santa Fe. The others do not exactly directly connect without going long distances out of the way to get back again. In other words, connecting with the Arcade station there is no direct connection between the Arcade station and the Santa Fe station, and passengers transferring from one to the other must struggle among themselves as to how best to make that connection, with the likelihood that they would come clear up town before they get back.

Q. Reversing the situation and coming direct to the station in the use of the general public in taking the trains, what have you to say as to the accessibility of these three stations?

A. Depends very largely on where you come from. A passenger coming in, for instance, from the Hollywood district on the westerly side of the city is obliged to pass completely through the heavy traffic of the congested part of the city to reach any one of the stations. He must pass through all the congested part of the city before he reaches any railroad station, whether it be Santa Fe, Arcade or Salt

Lake. In so doing, the only station to which he can get without crossing the steam railroad crossings, is the Arcade station. If he goes to the Santa Fe or the Salt Lake he must cross steam tracks at grade. By going to the Arcade he can, by going through the heavy traffic, get there without crossing the steam railroads, but he must pass through the traffic to reach it, making a large number of turns over an intricate system of streets and through the most crowded part of the city. To reach the Santa Fe, if he knows his way pretty well, he has to go around—he must know the way very well. He can come in from the boulevard and onto the plaza and work down some of the unfrequented streets, crossing only the grade crossing of the Southern Pacific. To go to the Salt Lake, not only must he go through the traffic but he must climb up over the First Street bridge which, as I have already told the Commissioners,—I was on that bridge one day when it took fire and the fire engine was unable to get up, the grade was so steep. If he comes in the traffic to reach any one of the principal stations he cannot do it by a line of street car which I have used the expression here this morning, through cars. He must do it by what are practically cross-town cars and these cross-town cars do not connect directly from one station to the other.

Commissioner GORDON. In your opinion, what size tract of land will be necessary to establish this union depot, to accommodate all the trains and tracks?

A. The idea we have in mind is we want to provide at least 40 tracks. Roughly speaking, in the terminal

layout here there is 25 acres as against 15 acres in the Arcade. Those are general figures, as roughly speaking this terminal, not including the terminal shown down at the plaza—the yard, the trackage, and so on,—well, it is roughly speaking 25 acres as against 15 acres. (Tr. 206-208.)

* * * * * * * *

Commissioner GORDON. Where is the center of the residential district?

A. The center of the residential district is today changing from the extreme southwest part of the city to way up here above the map and up to the left and coming northward toward Hollywood. That district between what we might call the University section, West Adams Street, is very rapidly going northward toward Hollywood. In other words, Hollywood is rapidly becoming a center, spreading southward, and opening up into the open area between, so that the residential section today is very, very largely to the north of the map here shown and is served by cross streets running from Sunset Boulevard and thence southwest within the V or angle of these streets here shown.

Commissioner GORDON. Then would a union depot at your proposed point there accommodate as many people as the Arcade depot?

A. We haven't the slightest hesitancy in telling the Commissioners in our belief it would accommodate a great deal more, to a great deal better advantage, and all the ordinary people who go to and from, whether from hotels, residences or business or sub-

urban points, it would result in a very marked diminution of the amount of time necessary to reach the station or get from it, for two reasons: In the first place, they are physically nearer, and secondly, the streets lead more directly to it; and above all else, that it provides a location of the terminal with infinitely greater access to the building, which is really the critical element of them all:

Commissioner GORDON. Would there be street car lines enough to accommodate the people?

A. I might be contradicted by someone else, but I believe there is a larger street car service at the plaza than anywhere else in the city.

Commissioner GORDON. Who owns the car lines available at that point?

A. You mean now or possibly?

Commissioner GORDON. Yes, now.

A. I could not give you all the names of the street cars there now.

Commissioner GORDON. The main lines.

A. The main lines which run out Main, Spring and Broadway. The main lines which run out Main, Spring and Broadway either come to the postoffice at this point (indicating) or come completely forward to the plaza (indicating). There are all the lines that run to the east and northern parts of the town out the Garvanza way, and the Hollywood cars that come to this point.

Commissioner GORDON. Then who owns those lines principally that you have described?

A. The Pacific Electric own the red lines, the Los Angeles City Railway own the yellow lines. Of course, it is also self evident that the re-routing of the street car lines is, we believe, well within your jurisdiction; if not, the competitive desire to get business can be trusted.

Mr. SIMONS. Are you familiar with the character of the structure of the Salt Lake terminal,—passenger terminal?

A. Yes, sir.

Q. What is it?

Mr. HALSTED. Please spare our blushes.

Mr. DURBROW. If you can make Mr. Halsted blush, please proceed.

Mr. SIMONS. I understand the president of the road is ashamed of it.

A. I wish I could recall the words of Senator Clark before the Council. Senator Clark said he was ashamed of the Salt Lake terminal. (Tr. 209-211.)

* * * * * * *

Mr. SIMONS. In fixing the union terminal at the plaza, at the point indicated on the map, considering the traffic that comes in from all the transcontinental roads to the union terminal what will be the saving, if any, in the way of time and delay in reaching stations?

A. It seems to me the question of saving time to passengers is not the whole measure of the value of a union terminal, by which, for instance, we will assume a passenger coming down from San Francisco, desiring to go to San Diego—we will assume he comes down from San Francisco to go to San Diego; he has to go

on the Santa Fe; we will assume that passenger is a woman with four or five children, and she has got to transfer from the Southern Pacific to the Santa Fe; or, take it you are a busy business man who has got to transfer from the Southern Pacific to the Santa Fe; how much easier it is—how can it be questioned, the utility, the advantage of stepping from one platform onto another; going from one platform and getting into another train? Take the Washington Station of the Pennsylvania, the Grand Central Station at New York, the South Station at Boston, take any of the stations going into Chicago, is there any comparison? How can I state a comparison? I don't see. I think it is very clear. There is a case where the saving can't be expressed merely in so many minutes or so many dollars.

Q. Now, referring to the incoming trains themselves from the El Paso-San Francisco lines of the Southern Pacific and the Santa Fe lines in discharging their passengers at the Plaza station, is there a saving of time as against the terminals further to the south?

A. Roughly speaking, the saving in time is represented in the trains by the saving of distance plus something or other for speed over crossings which must be maintained. Coming in over the Southern Pacific and going down Alameda Street to the Arcade station, they are what you might call a continuous grade crossing all the way. If they run slow enough to be safe they run slow enough to make a considerable element of time. If they run fast enough to accommodate the passengers, to do it quickly, then they jeopardize the lives of the people on the street. Here is a case where

in the new proposed terminal they can make no crossings and come into that at any speed they please consistent with stopping when they get there. The saving of time then is not merely the difference of time but the character of the run. They are fool proof right away. It is a right of way on which trespass cannot exist as against running now down a public street, which is pretty busy with its own business of the street irrespective of the business thrown upon it by the railroad. (Tr. 212-214.)

* * * * * * *

Cross-Examination.

Mr. STEPHENS. Mr. Storrow, the general plan of eliminating grade crossings which is illustrated here would be applicable to most any other location of a union depot as well as to that one that you have particularly advocated here?

A. That is a general question. I should say, no, sir. What I mean is we have endeavored to study the possibility of a number of different locations, not necessarily in extreme detail but in general.

Q. I understand, of course, that you have studied particularly towards this plaza location. I will change the nature of the question. The method of avoiding grade crossings really consists of throwing the bulk of the Alameda Street traffic down on the river, and that brings all of the steam railways practically on the river,— on either side of the river—and you avoid the grade crossings there by a series of short viaducts which will also accommodate the crossing of the river;

that is, a bridge is built over the river and it is extended far enough on either side to cover the railways that border either bank of the river.

A. Now, Mr. Stephens, I want to be very careful in cross-examination about either being technical or endeavoring to dodge, but I feel that in that particular statement with which you preface your question you suggest that the essence of this scheme is the moving of Alameda Street traffic to the river. I feel that is so wrong that that alone is the point I would like to answer. The essence of this scheme is not throwing the Alameda traffic on the river.

Q. Well, that is one of the elements of it?

A. Not quite.

Q. All right, you express it your way.

A. The essence of the scheme is the doing away with the Alameda Street traffic. The Alameda Street traffic consists of two types of traffic, the through traffic that goes through and out the southern side of the city, which is very little, and the traffic which consists of going down to the Arcade depot and back again, which is very large. The essence then of the proposed method of doing away with that consists of doing away with it,—not by moving it. (Tr. 226-227.)

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H. B. TITCOMB,

a witness called on behalf of Southern Pacific Company, being first duly sworn, testified as follows:

Direct Examination.

Mr. DURBROW. Will you please state the position that you occupy with the Southern Pacific?

A. My title is maintenance of way assistant, having charge of the maintenance of way of the Southern Pacific from San Francisco to El Paso.

Q. You are a civil engineer, Mr. Titcomb?

A. Yes.

Q. What experience have you had in engineering matters relating to railroads?

A. I have been in the active employ in the engineering department, in an engineering capacity, of the Southern Pacific for 26 years.

Q. During that time were you stationed in Los Angeles?

A. Have been stationed at Los Angeles since the early part of 1905.

Q. And you are familiar with the terminal situation of all carriers entering Los Angeles?

A. Yes, sir, I have been over them in detail.

Q. Now, will you please state whether you have made an investigation and a study of the terminal situation at Los Angeles of recent date?

A. Yes, sir, I have.

Q. And has that study been used in the formulation of a plan which the Salt Lake and Southern Pacific Company have for the joint use of the Arcade depot?

A. Yes, sir.

Q. I would like to have you state in your own way, please, exactly what is contemplated by the Salt Lake and the Southern Pacific Company in the plan which is now on the wall and which I will ask to have considered Southern Pacific Exhibit No. 1 for identification.

Commissioner THELEN. Well, we might as well introduce it now and be done with it.

Mr. DURBROW. Yes.

Commissioner THELEN. This map to which reference has been made, marked drawing No. 2943, may be introduced and marked

EXHIBIT No. 1 OF THE SOUTHERN PACIFIC COMPANY.

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Mr. DURBROW. * * * I would like to have you state, please, the present situation, outline the present manner in which the roads will operate as shown upon that map and then the changes that are proposed.

* * * * * * *

A. The Southern Pacific Railroad coming from San Francisco by both the Coast and the Valley routes join at Burbank and come into Los Angeles on the west side of the Los Angeles River and thru what is known as the Midway yard, past River station onto Alameda Street and into the present site of the Southern Pacific station. That is the passenger. The freight coming from the north comes in over the same route and now terminates in the Southern Pacific freight yards at what is known as River Station and marked on the map here. The trains from the East, what is known as the Yuma-El Paso route, come from the East on Alhambra Avenue, cross the Los Angeles River, and the passenger trains turn to the left and go south on Alameda Street to the passenger station and the freight trains turn to the northwest and into the freight yards as noted on this map. In addition to this east and north traffic they have quite a considerable traffic from

the south, from the district around the harbor there San Pedro, Long Beach, Santa Ana, Tustin and the citrus territory in the south.

Q. That involves freight and passenger traffic.

A. Involves freight and passenger traffic and it comes in on a private right of way thru Vernondale until it reaches the city of Los Angeles at about 22nd Street, which we call the Clement Junction. This freight and passenger business continues on Alameda Street north——

Q. Will you outline it on the map?

A. Yes. Continues right along on Alameda Street (indicating on map). The passenger business terminating at the station at the foot of 5th Street on Alameda, the freight business continuing along Alameda Street to the freight yards. Some of the trains from San Pedro are operated in block, that is, when we have sufficient train loading so as to make a thru train,—comes right thru Alameda Street and goes out to the freight yards.

Q. Comes down Alameda Street and turns into Alhambra without going into the freight yards?

A. Yes, sir.

Q. Let me ask you whether the traffic between Los Angeles and San Pedro on the Southern Pacific branch, the branch of the Southern Pacific, having reference particularly to the freight traffic which moves, is any indication of the load or volume of business handled.

A. Well, it is gaining in volume all the time. It is very, very heavy sometimes, 2, 3 and sometimes 4 trains

have been operated out there with as high as 50 cars each.

Commissioner GORDON. In what length of time?

A. Within a day, besides the empties necessary to go down there.

Mr. DURBROW. Can you state in a general way the number of passenger trains that move to and from the Arcade depot each day over the Alameda Street?

A. I have not that right up to the last time card, but there were 38 trains about 3 months ago operating in and out of the Arcade passenger station, so-called.

Q. And how many freight trains outside of the San Pedro trains would be operated over Alameda Street, Mr. Titcomb?

A. Outside of the San Pedro tracks, which are simply switching strings of cars, a few cars at a time, sometimes as high as 10 or 12 and up to 20 cars, which are taken and distributed to the industries located along Alameda Street——

Q. How about Santa Ana?

A. Considerable citrus business comes in from Santa Ana, Tustin and Long Beach and the tributaries south.

Q. Then there is business from the sugar producing territory, isn't there?

A. Yes, sir, at Anaheim.

Q. And the freight traffic over Alameda Street, outside of the San Pedro, Long Beach and Santa Ana business, would be properly measured by the number of engine units, wouldn't it, as long as it related particularly to the switching business?

A. Yes, sir, it would.

Q. How many such engine movements would there be over Alameda Street on a day, approximately speaking?

A. I would not wish to say definitely the number of trains that operated there in the way of freight trains, but I think it would figure today on an average of about 4 long freight trains that would come into Alameda Street every day, besides the switching tracks I have referred to.

Q. And then the light engine movement also?

A. Well, there is no light engine movement. The trains go down and the switch engines distribute the industry cars along Alameda Street.

Q. In breaking up the passenger trains, I understand the cars are moved to the coach yard?

A. Yes, sir.

Q. Now, the engines that bring the passenger trains into the Arcade depot and take them from the Arcade depot are taken by the hostlers and brought down by the hostlers from the round house out on Alhambra Avenue, are they not?

A. That is, the engines that haul the thru trains. The passenger trains are operated along Alameda Street to the shop grounds, that is to and from.

Q. Does that freight and passenger business which you have spoken of practically constitute all of the business that is now moved by the Southern Pacific over Alameda Street north and south into the passenger terminal and into these industries and yards?

A. Well, there is switching from the passenger terminal yards to the coach yards and there is also

transfer of Pacific Electric cars along Alameda Street from the foot of Macy, or about the foot of Macy up to about Seventh Street.

Q. Now, is that in a general and broad sense the manner in which all the traffic of the Southern Pacific Company is handled in this territory covered by this map?

A. Yes, sir, it is, on Alameda Street.

Q. Now, where is that coach yard shown on the map?

A. It is shown adjacent to Seventh Street and Alameda.

Q. Now, will you also point to what you call the River station freight yard?

A. The River station freight yard is located along San Fernando Road.

Q. Now, where is the round house and shops?

A. The round house is on the east side of Los Angeles River along Alhambra Avenue.

Q. Now, Mr. Titcomb, as you have covered the situation obtaining today I would thank you to very fully and completely state the manner in which that same traffic will be handled by the Southern Pacific Company and the Salt Lake line under the plan which has been proposed?

* * * * * * *

A. All right, sir. Beginning with the center of the—for the sake of brevity we will start in at the passenger terminal so as to get the trains out of there and show what this plan would do and how it would be constructed so as to get the train out of there. At the south end of the present umbrella sheds in the

passenger terminal we would start to elevate and we would cross from 6th and Alameda Streets, separating the grades at that point, continue to elevate until we cross over Mill Street, Mateo, Santa Fe Avenue, cross over the Santa Fe yards at an elevation so as to clear the present Santa Fe yards. There would be one bridge built curving to the north and one bridge built curving to the south across the Los Angeles River. At the end of these bridges the grades would start to go down. A northerly incline beginning at the northerly end of the northerly bridge would terminate a few hundred feet north of Fourth Street and then continue on a grade along the east river bank, following the line of the Salt Lake Railroad to the junction of the Santa Fe Railroad near the—marked on this map Humboldt Avenue,—near the foot of Humboldt Avenue. That is where the Santa Fe crosses the Los Angeles River. Continuing on the east bank of the Los Angeles River, by building a new structure across the Arroyo Seco, new tracks to a connection with the Southern Pacific Railroad just north of the crossing of the Los Angeles River, which has been referred to as the Pigeon Farm. At the southerly station the grade would start down, go over Seventh Street and reach a grade about Ninth Street. It would then continue south to a proposed Y connection as shown on the map to what is known as Butte Street line of the Salt Lake Railroad. It would then continue across on the Salt Lake line and make a connection to Alameda Street so that the trains to Alameda Street at this point or to the Pacific Electric at this point (indicating),—so that the plan

in fact for a continuance—so that the plan in fact would be—we would have a continuous track from our private right of way, except a few hundred feet right near the city limits—turning off of Alameda Street at the south city limits, or practically there, running east across the river and then north along the east bank of the Los Angeles River into proposed yards that we contemplate constructing, as conditions warrant, north of the present Pigeon Farm. That gives the Southern Pacific Railroad a complete belt line for its freight business on Alameda Street into its freight yard, or if it goes to Colton, up to Alhambra Avenue, where it can turn east without any further interruption with any other traffic.

* * * * * * *

As far as the passenger trains are concerned, we will then have a complete line without any grade crossing—crossing of grade with the street,—no grade crossing from the terminal east of the Los Angeles River,—under the present viaduct at Fourth and at First Streets, and will cross the remaining streets, namely, Aliso, Macy and North Main at grade as they are at the present time. In other words, our trains going north will eliminate all grade crossings except the three referred to.

Mr. SACHSE. How is the Santa Fe to be crossed, Mr. Titcomb?

A. The Santa Fe is to be crossed overhead by span construction. The detail has not been worked out, but we assume we will have the right to cross with span construction. They have a right of way 200 feet in

width and it is our intention to ask them to give us the location for one pier on their property putting in two 100-foot spans to accommodate that traffic going over there, going over their top entirely.

Mr. SACHSE. Thank you.

Mr. DURBROW. That is the general method of operating our freight and passenger trains?

A. Yes.

Q. It will result, will it not, in removing very largely the freight and passenger trains which now operate on Alameda Street.

A. Well, the ultimate plan is that it will eliminate everything off of Alameda Street except the industrial switching.

Q. Now, will you explain please how the Salt Lake line will be served by this proposed plan?

A. The Salt Lake line from the north coming in from Pasadena—branch line coming in,—they will continue along their same line that we have there at the present time, along the river bank until they get to the same grade I have spoken of, will come up the grade and cross over the Southern Pacific tracks and come into the depot the same as the Southern Pacific trains. Their main line trains and everything they have in the thru line business comes from the south or east. I say south meaning south of Los Angeles—they will come in along Hostetter Street and follow the existing route until they hit the proposed grade at the foot of Ninth Street and will cross that and come in on the elevated structure the same as we do.

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Mr. DURBROW. Now, has provision been made for the accommodation of the Pacific Electric road in this general scheme or plan so as to permit their trains to be operated more safely and expeditiously?

A. Yes, sir.

Q. And what is the plan that is proposed so far as the Pacific Electric is concerned, Mr. Titcomb?

A. The Pacific Electric at the present time is located at Sixth and Main. It has an elevated structure east from the back of its building where it comes down to San Pedro Street.

Q. That is already constructed and in operation?

A. Already constructed. The idea is that the Pacific Electric have a greater portion of its property purchased which extends from San Pedro Street to Alameda Street, where it can continue the elevated structure over all those streets, up across Central Avenue and by the general plan that we have in contemplation it would rise sufficiently over the Southern Pacific and the Salt Lake joint tracks so that there would be no grade crossing at Sixth and Alameda Street, so far as the Pacific Electric was concerned. It would then be on the northerly side of this elevated structure and would arrive at the same grade as this elevated structure at about Mill Street. It would then continue on this northerly side, cross the river on a 4-track bridge, so as to be entirely free from the steam line operation—want to prevent that—the Pacific Electric at that point will not operate on any of the tracks of these steam joint line companies. It will cross the river at the same place, continue down the same grade to nearly

the Fourth Street and then parallel along until they get to Aliso Street, where they will turn off with their short line to Pasadena.

Q. Now, you speak of three grade crossings that must be encountered when this plan goes into effect, in the operation of trains to and from the depot, Arcade depot, when trains proceed northerly. I want to ask you if this plan is in any wise so arranged as to prevent the separation of those grades at any time that a separation may be ordered by the Commission?

A. There is no obstacle thrown in the way. The plan does not prohibit the separation at those points.

Mr. DURBROW. Now, Mr. Titcomb, this proposed change in the line of the Pacific Electric would enable them to operate their trains from their present depot as far as the Aliso Street crossing without crossing any streets at grade, would it not?

A. Without crossing any streets or any railroads at grade. Would have absolutely free right of way.

Q. That would permit of a very expeditious and safer operation of their trains?

A. Surely, yes, sir.

Commissioner GORDON. What would you call that, a union depot, in the light that the community understands a union depot to be?

A. I would say myself that it conserves all the needs of Los Angeles as far as the union terminal is concerned. I have appeared before this Commission before in the other hearing, and I think my testimony at that time was that I did not consider Los Angeles as a city that required union terminal facilities, but the

railroads themselves require adequate facilities for their individual business.

Commissioner GORDON. Would you call that plan a plan for a terminal, a union depot, so far as that is concerned, leaving out the Santa Fe? It is an unfinished scheme, in other words, isn't it?

A. It is practicable for the Santa Fe to come into this proposition if the Commission thinks the area is proper and the location is the right one.

Commissioner GORDON. Has the Southern Pacific or the Salt Lake taken the Santa Fe into its councils?

A. No, it has not. It is a joint agreement between these two companies.

Commissioner EDGERTON. How would you bring the Santa Fe in?

A. Oh, several ways, it could be brought in. This is only a suggestion: The Santa Fe, where they cross at this point at the foot of Humboldt Avenue, which we will call opposite—well, opposite Humboldt Avenue where the Santa Fe crosses the Los Angeles River at the northerly end of town, they can join the Salt Lake on joint construction, come in on that line and in the south they would do likewise. They cross the river here (indicating) and go over here (indicating). They could turn and come through here (indicating) and join in here (indicating).

Commissioner DEVLIN. I would carry out that suggestion of a while ago and indicate those places.

A. Yes sir. The Santa Fe have a track south of Butte Street crossing the Los Angeles River. From that track they can swing into the Salt Lake, either

immediately further east or any practical point adjoining the Salt Lake on the east side of the river and come into this proposed passenger terminal along the same route as above described, that will be a double track through all of its line up to that, if they desire, and they can come in on their own line on this side (indicating) and come to Ninth Street, and they can turn into the elevated structure at this point between Sixth and Seventh, just west of the Santa Fe right of way. That would be another means. In other words, they can, if they wish to get into this facility, they have got two or three different plans. They can come on their own side and make their own grade to the north of that proposed elevated structure so as to get on the elevated structure if they so desire.

Commissioner DEVLIN. Do you think the area of the present Arcade depot which is proposed as a union depot in the City of Los Angeles, for the Southern Pacific and the Salt Lake, is a limitation upon the Santa Fe coming in?

A. That is an operating question, but we have at the present time eight through passenger train tracks. We can put in four more, making 12 through passenger train tracks with two separate—what we call head end or baggage tracks. Now, it is conceded that the through tracks is equivalent to two and sometimes—well, some engineers will say three tracks,—operating men say they won't have a stub terminal if they can possibly avoid it. A stub terminal is not looked upon with favor by operating men. They want

through terminals if they can get them. It is awkward and ties up equipment in the loading and unloading of trains.

Commissioner DEVLIN. Was the present depot built with the idea, was it generally planned based upon the expectation of adding tracks as needed?

A. It was built with the idea that we could put in four more tracks.

Commissioner DEVLIN. It would be limited to four more?

A. Yes sir. But it is possible, if we have several millions of population down here as some of us hope to some day,—I believe to go to the east side of Alameda and turn off on this elevated structure and connect up the present depot or a larger depot which might be built on the present site with tunnels under the street to reach it.

Commissioner EDGERTON. What about the freight of the Santa Fe in this plan?

A. The freight proposition—of course, the Santa Fe at the present time have all of their freight traffic along the east,—the west bank of the Los Angeles River. Their yards are located, freight yards are located west of the river in the vicinity of Fourth Street. Their freight is distributed from that point (indicating), and their freight houses are at that point (indicating). (Tr. 247-261.)

Cross-Examination.

* * * Mr. STEPHENS. But I am speaking now of the industrials north of your southerly elevated tracks.

A. The industries on Alameda Street will be just the same as they are at the present time. We will leave our River station freight yard and switch down Alameda Street, giving the necessary service to the industries, go along Alameda Street and over Sixth and Alameda Street, and down again at Seventh Street, so as to give the balance of this service. As a practical proposition that will work out ultimately, I am satisfied a great many of these switch engine drags will be operated over the Belt Line and the elevated structure to Alameda Street and from that point distributed both north and through on Alameda Street to the industries in that immediate location. In other words, it is our plan to eliminate, as far as we can, any movement on Alameda Street but leave it for freight and unlimited development of the industrial situation. (Tr. 272.)

Commissioner THELEN. Are you prepared now to say, Mr. Camp, as to what the attitude of the Santa Fe is toward the general question of a union passenger depot; is your railroad in favor of a union passenger depot, taking in all these steam railroads, or are you not in favor of it?

Mr. CAMP. I think I may say our people at the present time—I think I may say this, that our people at the present time would not be favorable toward a union terminal at the plaza or in that vicinity.

Commissioner THELEN. How about the other?

Mr. CAMP. And as to the situation at the Arcade station, I have no reason to think that our people would be averse to favorable arrangement there or in

that vicinity. It may be doubtful whether the present facilities of the Arcade would handle ——

Commissioner THELEN. Then I assume the Santa Fe is not opposed to the proposition of a union passenger terminal as an abstract proposition?

Mr. CAMP. Oh, we are not blankly opposed to that. (Tr. 274-275.)

* * * * * * *

Commissioner DEVLIN. The principle and policy of it you are not averse to?

Mr. CAMP. I don't understand we are opposed to the policy of a union station. We have just gone into a great big union station at Kansas City, at an enormous cost.

Commissioner EDGERTON. Then, as I understand it, you are not going to introduce any evidence then in defense?—You are a defendant.

Mr. CAMP. Oh, we may introduce some evidence against some particular plan but not against the general proposition.

Commissioner DEVLIN. Are you going to offer anything affirmative in favor of any plan which has not been referred to up to the present time?

Mr. CAMP. The Santa Fe has no plan to propose. (Tr. 276.)

F. W. BLANCHARD,

a witness called on behalf of the Central Development Association, having been first duly sworn, testified as follows:

Direct Examination.

Mr. SIMONS. You are the president of the Central Development Association, Mr. Blanchard?

A. Yes sir.

* * * * * * *

Q. What is the Central Development Association?

A. The Central Development Association is a civic organization formed of business men in the City of Los Angeles. (Tr. 286.)

Q. (By Mr. Simons). Did your association then consider the location, and had you in mind the location of a terminal station at the plaza, and when did you arrive at that, and how long had you been considering that?

A. Always, and I think it can be safely said that for the entire length of time that I have lived here the plaza district, somewhere in and about there, has always been looked upon as the logical center of a great union terminal, principally for the advantage of the thoroughfares that lead to that terminal, and from a general effect that it would have to all concerned.

Q. Did you have any examination of the ground and any surveys made and plans showing the use of the plaza, the station which we call the terminal station at the plaza, prepared by engineers and other persons?

A. No.

Q. When did you have that done; how recently did you have prepared the treatment of the plaza station and the terminal facilities of the depot running there?

A. As an association, speaking for the association, we based not only our own preference but our judgment largely on the report of the different engineers that had been secured by the city to make a plan for the city. The Bion J. Arnold report specifically states that, without doubt, in order to eliminate the grade crossings, a station in the vicinity of the plaza would undoubtedly be a necessity. Also the recent three engineers, who gave a very exhaustive study of this matter, similarly reported. And it was our opinion, based on the judgment of these engineers, that unquestionably this would be the advantageous point at which to erect a station. (Tr. 288-289.)

* * * * * * *

Mr. HAZLETT. Then one other question I would like to ask. I notice by the testimony of the witness that, in his opinion, the property in the vicinity of the proposed union station would be greatly benefited and could not an objection of that sort be overcome by organizing an assessment district and joining in the cost of a union terminal at that place, assessing some cost of that upon the district to be benefited?

Commissioner EDGERTON. You mean as a matter of law or matter of practicability?

Mr. HAZLETT. Matter of practice.

A. I think that would be a matter that could be taken up at a later date. I have found that in Los Angeles the people are always very liberal in almost any enterprise. I have thought really that this entire enterprise could be carried on, if the railroads seemed poor and couldn't finance it—I believe it could be

carried on by the City of Los Angeles, and I would like to see the City of Los Angeles own this station, as a fact.

Mr. SIMONS. Does that satisfy you, Mr. Hazlett?

Mr. HAZLETT. That satisfies me.

Mr. CAMP. Your theory would be to organize a terminal corporation, Mr. Blanchard?

A. Yes, Mr. Camp.

Q. And were you interested in the location of the present federal building, in getting the location where it is, the postoffice building?

A. I don't just exactly understand your question.

Q. Well, was your association interested in getting the postoffice building located where it stands?

A. No, not this particular association. I think the Civic Center Association was, or the Northeast and the Northwest Association.

Q. Is it a fact, Mr. Blanchard, that the people interested in real estate in that end of the city donated the site for the postoffice building?

A. I think they did. I am not in position to say.

Q. Is the selfish interest of the Civic Center Association so great that the Civic Center Association would be willing to arrange the donation of all lands necessary for the proposed terminal at the plaza?

A. I am on the stand as a representative of the Central Development Association.

Q. Very well.

A. I am an executive officer in the Civic Center Association, that is made up of very large money interests. I am not in position to say whether they

would or would not, but I am inclined to believe that this proposition here—as I say, if the railroads did not feel that they could invest the amount of money necessary for this terminal, I am convinced a holding company could be formed and that this station and the station facilities could be furnished.

Commissioner EDGERTON. I would like to understand your question, Mr. Camp. Land contributed to whom,—city or railroad? (Tr. 308-310.)

* * * * * * *

Mr. CAMP. Any arrangement up here would result in a separate corporation, a terminal company, and whether that terminal company should be owned by the city of Los Angeles or by the railroads, I don't think it makes much difference.

Commissioner EDGERTON. No, but you are suggesting the contribution of land. Now, if it is contributed to the railroads, the railroads would use it free of charge; if it is contributed to the city, the city might charge the railroads rental. I am asking you which contribution you are suggesting.

Mr. CAMP. Well, I am not suggesting a contribution to the railroads, jointly or separately. I don't think the contribution would be made that way.

* * * * * * *

Commissioner GORDON. Mr. Blanchard, what is the total active membership of the association you represent?

A. 100 members.

Commissioner GORDON. Is a portion of your membership interested in land around and adjacent to this proposed site?

A. A large part,—not all of them.

Commissioner GORDON. A large part of the Association then which you represent is interested directly in the land around this proposed depot?

A. Yes, sir. (Tr. 310-311.)

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H. HAWGOOD,

a witness called on behalf of the Central Development Association, complainant, having been first duly sworn, testified as follows:

Direct Examination.

Mr. SIMONS. What is your profession, Mr. Hawgood?

A. Civil engineer.

Q. How long have you practiced your profession?

A. Since 1874.

Q. How long have you been a resident of the City of Los Angeles?

A. Since 1888.

Q. What experience have you had in railroad engineering, civil engineering,—not as operating a locomotive but in connection with transportation problems as to trackage and the operation of trains?

A. About 20 to 30 years.

Q. What positions have you held in that respect?

A. From assistant engineer to chief engineer.

Q. Of what roads?

A. Several.

Q. Name them, please.

A. Chicago & Northwestern, Union Pacific, Oregon Short Line, Oregon Railroad & Navigation Company, Portland & Willamette Valley Railroad, Southern Pacific, Salt Lake Road and some smaller roads.

Q. How long have you been familiar with general traffic and transportation problems here in the City of Los Angeles?

A. Since 1888.

Q. And how often have you studied it or had occasion to examine in respect to any of the roads or all of the roads which enter here?

A. Quite frequently.

Q. As engineer of the plaintiff, the Central Development Association, were you asked to examine the plans for the entrance of the railroads, present railroads, or any other railroads which might come into the city, into the terminal at the plaza?

A. Yes.

Q. What did you do in that connection?

A. I went over the ground. The plan that was submitted to me is shown in general by exhibit No. 1, and I have been on the ground.

Q. You have been on the ground?

A. Yes.

Q. Are you familiar with the entrance of all the roads and their trackage as they come into the City of Los Angeles?

A. I am. (Tr. 312-14.)

* * * * * * *

Q. What is the character of the ground stretching from the Los Angeles River westerly to this proposed terminal?

A. To Alameda Street it is practically flat with a general slope to the south.

Q. Is the bank of the river higher or lower than Alameda Street?

A. It is higher than Alameda Street. Alameda Street is the natural drain for that country.

Q. Are there any engineering or operating features in reference to the construction of this proposed connection with this terminal site?

A. No.

Q. Feasible?

A. Quite feasible.

Q. What have you to say with respect to—in general terms as to this relative cost?

A. Its cost will be relatively low for the reason that it is chiefly down on the ground without elevated structures. (Tr. 316.)

* * * * * * *

Q. Now, with respect to the topography and the physical features of the ground at the plaza and stretching easterly, what is it, generally, in respect to elevations?

A. The plaza is some—I am not particularly sure as to the exact height; must be 20 to 30 feet higher than Alameda Street.

Q. Is that condition favorable to the construction of operating a depot economically?

A. Yes. It would lend itself very well to the construction of a depot. (Tr. 317.)

* * * * * * *

Q. You have been familiar in a general way with the results and the accidents at grade in the crossings of those streets near the river leading to the City of Los Angeles?

A. I have. I have been crossing them on the Pacific Electric cars daily for the last 10 or 12 years.

Q. And is such a crossing—how do you characterize such crossing with cars at those grades?

A. Bad.

Q. Dangerous?

A. Yes.

Q. What method would be feasible in the use of this terminal station for transportation or for tracks to the south leading from the terminal to the south in the direction of the Santa Fe property?

A. I believe Mr. Storrow sketched on exhibit 1 in pencil a connecting curve. Yes, there is one sketched here in pencil (indicating).

Q. Are there any physical difficulties of any character in respect to that construction?

A. No, I went over the ground with Mr. Storrow to see if there was anything in the way. There is nothing.

Q. What can you say of the curve which would be required in reaching the street trackage to the south?

A. I don't understand that question.

Q. Is it an operative curve?

A. Oh yes, yes.

Q. Is it an easy curve?

A. Yes, well within the limits of operation. (Tr. 318-320.)

* * * * * * *

Q. You are familiar with the situation in relation to the Pacific Electric Railroad and its crossing?

A. I am.

Q. Do you know what the plan is in relation to eliminating grade crossings in this plan of the Central Development Association? (Tr. 323.)

* * * * * * *

A. As I understand these plans, they would all fall into line with that joint engineers' report which contemplates the elimination of grade crossings on Aliso Street, which is the one we are particularly interested in in Pasadena.

Mr. HAZLETT. That would bring the traffic free of grade crossings up to Main Street near the plaza?

A. Yes sir, except for the industrial tracks which would naturally be left on Alameda Street.

Q. Would they be at grade?

A. If they are left there they would have to be at grade to do the service.

Q. So that the grade crossings would not be entirely eliminated?

A. No, the industrial switching would take place there.

Q. Well, would that be a menace to those traveling upon the Pacific Electric?

A. Not particularly. (Tr. 323-324.)

* * * * * * *

Mr. HAZLETT. The traffic over these tracks you have mentioned, the Pacific Electric line, is from all the valley cities, the north valley cities, is it, from San Bernardino, Riverside, Redlands and the cities between that and Pasadena, and Pasadena and the surrounding cities.

A. And Alhambra and San Gabriel.

Q. That takes in a large amount of traffic, does it not?

A. Yes.

Q. And the going of the cars is almost continuous on Aliso Street now in coming into and going out of the city, is it not?

A. At the busy time of the morning and evening there is approximately a car one way or another every two and a half minutes. (Tr. 325-326.)

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F. P. GREGSON,

a witness called on behalf of the Associated Jobbers of Los Angeles, having been first duly sworn, testified as follows: (Tr. 415.)

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recalled: (Tr. 437.)

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In answer to Commissioner Gordon's question whether we have some difficulties in Los Angeles, wh

freight difficulties we have, they are minor ones and may be overlooked, just by minor improvements. There is no possible change that could be made that would improve our freight situation.

* * * * * * *

We object and will contest strongly any visionary or substantial changes made by engineers that causes us this loss, unless we are fully compensated, not only property compensation, but as to our local situation, and we hope that you will instruct your engineer to investigate before considering any change, our situation from these standpoints, first, to relieve the congestion of this large city, reaching the business houses at the least economic waste and cost to the consumer which always must pay for the delivery. Alameda Street is ideal, for the reason that all streets are paved into it, and there is no congestion, no tracks, no steam lines on the west side of Alameda Street that prevents us from giving prompt and quick deliveries to the consumer, the retailer, and as far as our local depot is concerned, we are ideally situated in that neighborhood, although there may be some advantage in the Salt Lake changing its local depot,—and I think there is and it should be permitted to change,—and with a little change of the Southern Pacific Company's local depot, we will have in Los Angeles a perfect and ideal situation from those three angles. (Tr. 450-451.)

Q. (By Mr. HALSTED) Assuming, Mr. Gregson, that the through passenger trains and the through freight trains were removed from Alameda Street, do

you think that the switching on Alameda Street to the industries could be accomplished, and with less interruption of travel than at present?

A. Very much so; very much so. If you remove your freight and passenger trains from Alameda Street, the congestion, in my opinion, would be reduced 99.9 per cent, but that only one-ninth or one-tenth of one per cent is caused, if any, by industrial switching.

Q. Well, isn't it true that under the present condition, with passenger trains and freight trains,—through trains, I mean—operating on Alameda Street, a switching crew desiring to place a car at one of the industries on Alameda Street, has to time their movement with respect to these through trains, and therefore run back and forth much more than if there was no through movements on the street? (Tr. 455.)

A. I think I get what you have in your mind, Mr. Halsted, to state quite plainly. In other words, the switch engine must get under cover while the through freight and passenger trains are going back and forth. If you take off those through freight and passenger trains, it will save the railroads probably 50 per cent of the cost of switching to industries. (Tr. 456.)

* * * * * * *

Commissioner EDGERTON. May I ask you, if through freight and passenger service is taken off of Alameda Street, leaving only the switching service, would it produce a better service than you now have for your industries?

A. 99.9 per cent better, yes sir. (Tr. 463.)

H. B. TITCOMB,

recalled: (Tr. 581.)

Q. Now, Mr. Titcomb, leaving out of consideration for the time being, if you will, please, this plaza scheme, and directing your attention to the present depot facilities of the Southern Pacific Company, and taking into consideration the difficulties that complainants contend are encountered in reaching that depot by the operation of the main line carriers into the depot, I want to ask you if a comprehensive scheme has been formulated which will relieve the present difficulties of which complaint is made?

A. Yes, sir, there has been developed a complete working scheme whereby every steam railroad, passenger or freight train, moving into or out of the City of Los Angeles, will not cross a single street crossing at grade north of Butte Street on the north on the Southern Pacific I will say practically to Tropico, on the east on the Southern Pacific practically to Workman Street, on the Santa Fe at the north end practically in the vicinity of Humboldt Street, on the south as far as Butte Street, and the same limits on the Salt Lake Railroad. * * * The Salt Lake engineers, the Pacific Electric engineers and myself, have jointly gotten together. This is our joint interchange of facilities that we have worked out in a practical manner to entirely eliminate this grade crossing evil as is expressed here by others.

Q. And will the plan provide adequate terminal or depot facilities to meet the present requirements and the requirements of the future?

A. Yes sir. (Tr. 591, 592.)

Q. Now, having reference to the Southern Pacific Company's depot facilities as they exist at the present time, have you any plans of that depot and the station grounds, showing the track layout?

A. Yes sir.

* * * * * * *

A. We have here 12 drawings, architectural drawings, of the passenger station for the Southern Pacific Company, as prepared by John Parkinson and Edwin Bergstrom in 1913,—to make it exact, May 9, 1913,—being 12 sheets marked "Job No. 314". (Tr. 593.)

Q. Do they show the complete depot and track layout?

A. They show the complete depot, the size of the rooms, the elevations, plans and elevations of the building.

Commissioner THELEN. Those plans may be introduced and will be marked, in order,

EXHIBITS 8-a to 8-l inclusive

of the Southern Pacific Company and the Salt Lake.

* * * * * * *

Mr. DURBROW. Now, Mr. Titcomb, will you please state the amount of money that was expended by the Southern Pacific Company, in erecting the depot and providing the track layout as shown on the maps known as Exhibits Nos. 8 and 9.

* * * * * * *

A. I will have to put that in two ways then. First, the new money that was expended on this depot and its appurtenances, within the confines of 4th, 6th, Alameda and Central Avenue, not including the purchase of property necessary for the scheme, was $637,218; that is the cost of that depot as it exists there at the present time; that is what that building meant to us.

* * * * * * *

A. In addition to the Wolfskill Tract or property, that was given us about along in '85, I think it was, we purchased additional property on Central Avenue of $297,517, to make this depot plan possible that we built at 5th and Central.

Q. Then the aggregate amount of money expended by the Southern Pacific Company in constructing this depot, outside of property which it owned at the time it was constructed, amount to how much, Mr. Titcomb?

* * * * * * *

A. That is $934,735. Now, then, you haven't got all the new money we expended there. Shall I go ahead?

Q. I want to ask if, in addition to expending money for the purchase of this real property and for the erection of the depot, any further sums were expended for accessories, such as coach yard, Pullman and Wells Fargo facilities?

A. With the enlarging of our passenger facilities it was absolutely essential and necessary to enlarge our coach facilities, dining car shed, Pullman car sheds, additional trackage, paving of tracks, additional pintsch gas plants, electric wiring and conduits, gas mains, water mains, steam mains and air mains, all that goes

to make up a coach yard facility, in addition to what we had there before. We spent $206,022. This makes a grand total so far of $1,140,757 of new money expended. Now then, let me add just a little to that. When Wells Fargo were taken out of the old Arcade it was necessary for them to get another location. They purchased property on Central Avenue and put up a building to take care of their facilities; that closely approximated $160,000. In other words, this 5th and Central development since 1913 has cost $1,300,757. (Tr. 594-596.)

Mr. DURBROW. How long have you been engaged in working on a plan to bring about the ideal way of handling trains, freight and passenger, in and out of the City of Los Angeles, Mr. Titcomb?

A. I came to Los Angeles in March, 1906, as division engineer of the Los Angeles Division. I was made district engineer in December, 1908, having jurisdiction of the Southern Grand Division of the Southern Pacific Company, and in all of that time these studies have been made by me as to ultimately providing a plan for taking off passenger and freight movement off of Alameda Street. By freight movement I mean the through freight movement.

Q. Yes, Mr. Titcomb, did you at that time when you first came here, and have you subsequently made a study of the situation to determine the number of units that cross streets, in reaching the depots of the several main line carriers and of the Pacific Electric Company?

A. Yes sir; I have.

Q. And what is the result of that investigation?

A. We will preface our remarks by saying that a passenger train leaving the present Southern Pacific station would cross 4th, 3rd, Stephenson, Second, First, Jackson, Commercial, and other streets. I need not name all of them. Well, go ahead—Commercial, Aliso, Macy, Main, that is, as far as Naud Junction, and other streets, depending upon which way it goes. In other words, if we have, we will say 15 crossings, one passenger train going out has 15 crossing movements. If we had 10 passenger trains out, we would have 150 street crossing movements by trains. Now then, using that as the basis, I find at the present time on the streets along Alameda Street that we cross, and by that I only mean streets that have a connection through; some of the streets like Banning Street, that only runs up to Alameda Street but don't run through. I have not counted that, but it is really a crossing in the sense of the word, because a vehicle that would come west on Banning Street to go south on Alameda would necessarily have to go across our train movement. But eliminating that, and all of those such movements, I find we have passenger movements crossing at grade, 444.

Q. Within 24 hours?

A. Within 24 hours; 300 freight train movements; 558 light engine movements and 102 coach yard drag movements, or a total movement of the freight and passenger of 1408.

Q. A total crossing movement?

A. The total street crossing movements.

Q. Well, that is on the Southern Pacific alone, Mr. Titcomb?

A. Yes sir. Similarly with the Salt Lake, of their crossings, we have 89. Similarly on the Santa Fe we have 306; similarly on the Pacific Electric Railroad down San Pedro Street and along Aliso Street we have 22,950, making a——

Commissioner GORDON. In what length of time?

A. In 24 hours—making a total grade crossing or street crossing movement of 24,753.

Mr. DURBROW. In every 24 hours?

A. In every 24 hours.

* * * * * * *

Mr. DURBROW. That is the Salt Lake and Southern Pacific?

A. That is the Salt Lake and Southern Pacific, from 1497 to 583. It would reduce the Pacific Electric from 22,950 to 1350 thus eliminating 21,600 street crossing movements.

Q. Now, I understand that number of street crossing movements would be eliminated immediately upon the execution of the plan that was proposed by you at the former hearing?

A. Yes sir.

Q. Now, Mr. Titcomb, does the final ultimate plan which you have to propose reduce that number of grade crossings to a further extent?

A. It does. It reduces it to absolutely zero.

Q. So that the plan that you have now to propose will eliminate all of those thousands of grade crossing movements?

A. It will relieve 24,753 street crossing movements, with the Pacific Electric, Salt Lake, Southern Pacific and Santa Fe. (Tr. 603-607.)

Mr. DURBROW. Now, Mr. Titcomb, am I correct in my understanding that the plan which is marked exhibit No. 1, and which was introduced at the former hearing, is a plan that has been proposed by the Southern Pacific and the Salt Lake line to relieve the present situation, that those carriers are prepared to carry out that plan upon receiving the consent of the Commission, and that the plan as originally proposed lends itself to the further scheme of eliminating these grade crossings in the method that you have suggested in the event the carriers are ordered to remove those grade crossings.

A. Absolutely, yes; that is correct.

Q. So that all of these suggestions of grade elimination can be accomplished at any time subsequent to the carrying into effect of the plan as proposed by the carriers?

A. Yes sir. (Tr. 620, 621.)

A. I have prepared a map and wish to introduce it, it being a lithographed map marked "Official Transportation and City Map of Los Angeles".

Commissioner THELEN. That map may be introduced and will be marked

EXHIBIT No. 17

of the Southern Pacific and Salt Lake.

* * * * * * *

A. I have verified these street car lines, and I have shown in black—I will call your attention first to the 5th and Central Avenue location, and I have shown in black, in full black lines, heavy black lines, the street car lines that go within two blocks of the entrance of this passenger depot without a transfer. These are the main lines that run to the various parts of town, of the Los Angeles Railroad.

Mr. SIMONS. Without transfer?

A. Without a transfer, going within two blocks of the depot. I have shown in solid red the Pacific Electric System that will go within one block of this depot, and how it will serve this system. The northeast section passing Alameda and 6th, the Long Beach section passing Alameda and 6th, the Glendale line, I think they call it, that operates along Hill Street and along 6th to the depot, and at this point, as you all know at present coming in from Hollywood can transfer without additional fare—I don't know what that particular portion ——

Mr. KARR. Lakeshore and Sunset.

A. Lakeshore and Sunset, so as to reach this depot by a single transfer. In other words, the dotted red shows the lines of the Pacific Electric that reach this depot without additional fare by one transfer. Now then, any other street car line, as shown in yellow, which is the Los Angeles Railway, can transfer to the depot of the Southern Pacific—station—of the Southern Pacific, I think, by a single one transfer. I was unable to locate a line that would not do it. I might be mistaken as to every one, but I can say at

least practically every line in the City of Los Angeles can reach this depot by a single transfer by a 5 cent fare. (Tr. 625, 626.)

Q. Will you please summarize what the joint interchange of facilities between the Southern Pacific and Salt Lake Line will accomplish?

First, the relief of the through freight and passenger train movement on Alameda Street; second, quicker and more efficient switching from Alameda Street to the industries; third, a practical, comprehensive and ultimate plan whereby the Southern Pacific Company may not have any street grade crossings south of Tropico and north of Butte Street, and west from Workman Street and Alhambra Avenue, other than strictly industrial switching; fourth, a practical, comprehensive and ultimate plan whereby the Salt Lake may not have any street grade crossings south of Humboldt Street, or north of Alosta Street, or in the vicinity of Butte Street; fifth, a plan making it possible for viaducts to be built across the Los Angeles River where street grade crossings now exist, or where future crossings may be placed across the river. Sixth, viaducts can be placed across the river, which will effect the separation of grades for all crossings of the Santa Fe from Humboldt to Butte Street, other than strictly industrial switching. Seventh, it will give the Salt Lake Company the benefit of the Central Avenue location, adequately served by street and interurban cars. Eighth, it provides a route and a feasible plan for the Pacific Electric to have a high speed elevated line from the Pacific Electric Building to its private right

of way at Aliso Street and the Los Angeles River, without a single street grade crossing or a crossing of either steam or electric railroads. Ninth, when this ultimate plan is completed, it will reduce the number of street grade crossing movements with steam or interurban trains from 24,753 to zero.

Now since I made these figures I found that I overlooked one thing, as far as I can see now, and that is the Long Beach situation as far as the Pacific Electric is concerned. This plan lends itself and provides that we can turn off of this elevated structure that is originally contemplated in the vicinity of Central Avenue and Sixth Street, parallel Alameda Street along the westerly side thereof, cross over Industrial Street, over Seventh Street, and drop onto the present property of the Pacific Electric south of Seventh Street. Now this would eliminate then the grade crossing movements of all the south division cars of the Pacific Electric Railroad across Seventh, Central Avenue, Kohler Street, Ceres, Gladys, Stanford, Towne, Crocker and San Pedro, or nine main thoroughfares. I think there are upwards of a thousand trains operated south. If there were nine crossings, that would mean 9000 more street grade crossing movements that could be eliminated by this plan as suggested, which would be the ultimate plan. (Tr. 627-629.)

Commissioner THELEN. This photographic reproduction, headed "Sixth and Alameda Streets, proposed grade crossing elimination," may be introduced and will be marked

EXHIBIT No. 18.

of the Southern Pacific Company and the Salt Lake. (Tr. 645.)

* * * * * * *

Cross-Examination

(of Mr. Titcomb by Mr. Simons).

A. There are two head end tracks, 8 passenger tracks, and I think—the map is filed with the Commission—5 storage tracks, as we call them at the present time. We are using them temporarily until the ultimate scheme or necessities force us to put in 4 more passenger tracks and extend the subways or inclines to make a 12 passenger track system through the depot at that place. (Tr. 675.)

* * * * * * *

Q. Do you have any trains which come from the north—and all of your trains do enter from the north, I believe?

A. Not all of them, some from the south.

Q. What enter from the south?

A. The Santa Ana trains.

Q. 95 per cent of your traffic comes from the north, does it not?

A. Yes. (Tr. 677.)

* * * * * * *

Q. Where is the throat of your yard entering from the north into your Arcade depot?

A. Beyond Fourth Street. But, you will note on the plan, the detail on the 100 foot map that is furnished there, that the necessity for the cross overs and the handling of the business, forces the switching very

much north of Fourth Street. I will refer to the exhibit that is filed with the Commission.

Q. What number is that?

A. It is the 100 foot blue print map marked 13-4.

Commissioner THELEN. That, I believe, is exhibit No. 9 of the Southern Pacific and the Salt Lake?

Mr. SIMONS. 9.

* * * * * * *

A. The northerly switch that takes care of the trackage proper is about 330 feet north of the north line of 4th Street. But in addition to that, in order to serve the express business of the Wells Fargo & Company, and provide the necessary butter cars room, and so forth, it was necessary to put and move this switch to serve that property to approximately the south line of Fourth Street, as shown on the exhibit here; approximately the south line of Third Street which serves the butter and perishable products of the Wells Fargo & Company. (Tr. 679.)

* * * * * * *

Q. In your plan No. 1 at Fourth Street, what tracks at their present grade do you maintain?

A. All of them.

Q. No change, whatever, is there on the surface?

A. No change.

Q. Just in passing, in order that I may read it in the transcript, do you make any change there in your ultimate plan?

A. We do not, except as to the operation, switching of trains.

Q. Except as to the——

A. Operation and switching of trains. You understand, by providing——

Q. No; I am just talking about the tracks.

A. I am talking about the tracks.

Q. Pardon me, I mean the physical lay on the ground.

A. All right, the physical layout on the ground, as I say I take out the operation of these trains across Fourth Street to a marked degree. We have provided the elevated structure at 6th Street. The switching and the handling of trains will be to the greater extent done at that point. We have taken away all of the light engine movements, and all of the passenger traffic across that street, and we consider we have done much at Fourth Street.

Q. I simply ask, and I want to know on the record, if you have made any change in the location of the tracks or elevation of the tracks as they now are on Fourth Street?

A. No sir. (Tr. 681-682.)

* * * * * * *

Q. Have you in preparation for this hearing, or in respect to these estimates which you have given, have you consulted any authority in respect to the dimensions or the location of tracks or amount required for the proper serving of trains by platforms?

A. Yes, sir, that has been my practical profession for many years.

Q. In other words, you base it upon your own experience?

A. And what I have seen at other depots.

Q. Did you say you had been in St. Louis?

A. I was in St. Louis five years ago. I don't recall the layout.

Q. There is a Union station in St. Louis, is there not?

A. Yes sir.

Q. It is 80 feet on the side street and 600 feet long. Does that concur with your recollection?

A. I don't remember the size of the building.

Q. You remember the form of the building, do you not?

A. Yes, a stub-end depot.

A. A stub-end depot.

A. 31 tracks in it, I think.

Q. 31 or 32, isn't there?

A. 31 or 32.

Q. And how wide is it?

A. I don't remember.

Q. 601 feet, isn't it?

A. I don't know.

Q. Well, the building itself, just viewing it for a moment as where the Commissioners are now sitting, and you are at the end of it, is about 80 feet; that constitutes the offices and the entry and the trains themselves run out from there in the direction of that wall, do they not?

A. Yes sir; it is a stub-end depot.

Q. An actual stub-end depot?

A. Yes sir.

Q. And the distance is 600 feet, is it not?

A. Yes sir—I don't know; I say I don't know what that is.

Q. But you know there are 32 tracks?

A. I know there are 32 tracks.

Q. How do you know that?

A. From my general knowledge. I don't know where I got that, but somewhere in the papers that I have read.

Q. Well, you have just memorized that. Can you think of any other depot where you carry the same line of information in your mind, at this moment?

A. Well, we have the Washington depot.

Q. The Washington depot.

A. I think that is 760 feet frontage.

Q. How many tracks?

A. I think there are 28 tracks there; 28 tracks, yes.

Q. Well, is that depot serving one platform to 2 tracks?

A. No, that depot is served by elevators coming up at either end from the passenger service—from the baggage service below. But I do know——

Q. How about the passengers?

A. I do know when I got into the train there on July 6th, walking down the side of my train on the passenger platform to get into the train, I was tooted out of the way three times by baggage trucks, getting onto a first class limited train in the Washington Terminal Depot.

Q. So you don't approve of the Washington Terminal?

A. I did not; I was disappointed.

Q. Were you interfered with at St. Louis when you took the train?

A. No, that was a stub-end depot there, and, as I say, it was 5 or 6 years ago that I was in St. Louis. (Tr. 702-705.)

* * * * * * *

Q. Who designed the San Francisco depot?

A. That was designed under my predecessor, Mr. Drake, and Mr. Morrison and Mr. Ahern and others from the north.

Q. That is a stub-end station.

A. Most of the tracks, except the receiving track.

Q. And doesn't it correspond in general form or general idea to the treatment of the St. Louis station?

A. It does, except that the throat in the St. Louis or the other stations you speak of, is not laid out in the manner that I should lay out, or that the San Francisco depot is laid out, to spread out and serve the trackage.

Q. As far as the platforms are concerned?

A. The platforms are the stub-end feature.

Q. They are indentical, aren't they?

A. Practically so.

Q. And that was built when?

A. 2 years ago, just before the opening of the Fair. (Tr. 706.)

* * * * * * *

Commissioner THELEN. What is your name, please?

Mr. PAGE. Benjamin E. Page. I respectfully ask to have my appearance entered in this proceeding for the

Business Stability Association. I have with me a set of plans for a proposed union station terminal at the plaza site.

The Business Stability Association is composed of some of the best known men in this city, men like Mr. Harry Chandler, Mr. A. P. Johnson, Homer Laughlin, Jr., F. W. Flint, Jr., and Mr. E. P. Clarke. I simply mention these names as evidence of the fact that the plans merit serious and careful consideration. I simply ask to file these plans at this time for the consideration of the Commission at such time as shall be convenient.

These plans have been prepared by Messrs Leeds & Barnard. Captain Leeds was former United States Government Engineer here in charge of the government work at San Pedro, and he has now been called to the government service. Mr. Barnard at the present time has charge of this matter. In fact, these plans represent his personal work, and he will be very glad at such time as shall suit the convenience of the Commission, or its engineer, to explain them. (Tr. 491.)

* * * * * * *

W. K. BARNARD,

a witness called on behalf of the Business Stability Association, having been first duly sworn, testified as follows:

Direct Examination.

Commissioner THELEN. What is your name please?

A. Barnard.

Q. Your initials?

A. W. K.

Commissioner THELEN. W. K. Barnard, a witness sworn on behalf of the Business Stability Association.

Mr. PAGE. Mr. Barnard, let me ask you first, you are a civil engineer by profession?

A. Yes sir.

Q. When did you receive your professional training?

A. Why, I was graduated from the Yale University, Scientific School, in 1901.

Q. And what active professional experience have you had? I will ask you to state it briefly, and to state in particular what, if any, experience you have had as a railroad engineer.

A. On my leaving college I went with the Pennsylvania Railroad at Pittsburg, and I was there for 2 years, on what was known as the South Side Development, from Birmingham station to Sheridan yards, which consisted in grade eliminations and track rectification. I was there, of course, in a very minor capacity, I had just graduated from college, but I watched with interest the work that was done. I was naturally interested in it as an engineer. I was there for 2 years, and then I was put in charge of the second tracking and bridge work of the Pennsylvania Railroad on the Chartiers Division, in charge of some half million dollars worth of work, double tracking 8 miles of line. After I left the Pennsylvania Railroad, I came to the Salt Lake Railroad at Salt Lake City, as an assistant engineer in the engineering corps, in charge of maintenance, construction of passing tracks and construction of terminals at Caliente; and I was later trans-

ferred to Los Angeles as assistant engineer of maintenance of way, in charge of the usual duties of the office under the engineer of maintenance of way. I was there from 1906 to 1909, I believe. At that time I went with the Pacific Electric as engineer of the maintenance of way and structures, and I was with them from the latter part of 1909 to early in 1910, when I resigned on account of my health. At that time I was in charge of their maintenance department.

Q. And at the present time you are a member of the firm of Leeds & Barnard, are you not?

A. Yes sir.

Q. Of this city?

A. Yes sir.

Q. Now, Mr. Barnard, you have prepared, have you not, a plan of a proposed union terminal station to be located on the plaza site?

A. Yes sir.

Q. And you have that plan with you?

A. I have it. (Tr. 717-719.)

* * * * * * *

Mr. PAGE. Just explain that plan, will you please, Mr. Barnard? (Tr. 719.)

* * * * * * *

A. * * * This location of the terminal, in our opinion, is the logical place for it, for several reasons: Geographically, all of the principal streets of town radiate from the old plaza location: Alameda Street, San Pedro Street, Los Angeles Street, Main Street, Spring Street, and Sunset Boulevard, and Alameda Street going out this way, or North Main Street, and

North Broadway. Topographically, it is workable. Our plan is to excavate this whole plaza system and put the plaza terminal with a concourse to enter the trains at the south end, and the building arrangements will be located there in detail as should be best worked out to get the passengers to and from the concourse in the best way. The Pacific Electric passenger line will come down immediately in front of the building, and the topographic situation is such that they could go in on a grade, on a level with the train floor, and have the length of the front of the station, and they could discharge on separate unloading tracks the passengers into the terminal, directly on the train floor level, and proceed into the eventual subway system on Hill Street and Main Street. (Tr. 722.)

* * * * * * *

Los Angeles, Cal., November 20, 1917.—10 o'clock A. M.

* * * * * * *

F. D. HOWELL,

recalled.

Q. (By Mr. SIMONS) Have you noticed the operation of the gates and the bells on Alameda Street, as to the effect on the traffic crossing Alameda Street, as to whether it interrupted traffic, or not?

A. It materially interrupts traffic.

Q. Do those bells and gates work accurately?

A. The bells are very frequently out of order and very frequently, too, get started ringing and won't stop until somebody comes out and adjusts them.

Q. And so suspends the traffic?

A. And so suspends the traffic and everybody until each individual has investigated for himself and then runs across in the face of a bell, seeing no other transportation.

Q. In your position as the chief engineer of the Board of Public Utilities, since the last hearing have you known of an accident at Aliso Street?

A. Yes, sir.

(Tr. 790-791.)

* * * * * * *

Commissioner THELEN. As long as you have gone into the matter, Mr. Simons, you might fill out one or two details. The train that was struck was a Pacific Electric?

A. Pacific Electric and three car train that was struck.

Commissioner THELEN. And it was proceeding on Aliso Street in which direction?

A. Going easterly in the yard. I think it was an industry movement, but I am not certain. It was freight and not passenger.

Commissioner THELEN. And it was struck by a Salt Lake train?

A. Southern Pacific.

Commissioner THELEN. Moving along Alameda Street?

A. Yes sir.

(Tr. 791-792.)

* * * * * * *

W. K. BARNARD,

recalled.

Direct Examination, resumed.

Mr. PAGE. Have you your plan?

A. The plan, no. The plan is in Mr. Sachse's file. I would like to have it up here if you wish to see more about the plan, and then I can explain it.

Commissioner THELEN. Have you that, Mr. Sachse?

Mr. SACHSE. Yes. (Document handed to the witness.)

Commissioner THELEN. That is

EXHIBIT No. 1

of the Business Stability Association.

(Tr. 795.)

* * * * * * *

Mr. PAGE. Now, will you explain the plan to the Commission?

A. I think my testimony before when this plan was introduced explained it briefly, and I don't recall just exactly what point I covered, but I have made a brief memorandum of what I considered the advantages of a location for the terminals shown on this map.

Commissioner THELEN. No objection to his reading that.

A. If there is no objection I will read that memorandum and explain it further if desired. First, this location will provide ease of access and ample facilities for all railroads, present, or probable future. By that I mean that the track facilities are adequate. There are 32 tracks shown on this diagram. There are connections made to all the existing railroads without unnecessary or devious approaches to the terminal.

It is capable of progressive development to take care of the increasing needs. The location shown provides for 32 tracks approximating 1000 feet in length, though by changes in the location of the latter tracks, or interior arrangement of the yard, they can be made to accommodate trains probably 1500 or 1600 feet long, which is as long as anything we anticipate at this time. It has adjacent holding tracks for the immediate movement of coaches and trains from the platform tracks, which is necessary in any terminal which has a movement of a great many trains in and out within a short period of time, and to obviate the necessity of hauling your coaches from the train that is unloaded over your local tracks in the face of approaching loaded trains. Three, it requires a less amount of disturbance of existing track arrangements. I say that because we have made the approach or throat to the yard substantially from the Redondo Street tracks of the Southern Pacific, or what I believe is known as the north leg of the 'Y', which connects the El Paso tracks with the tracks to the valley and to San Francisco. The tracks on Main Street are taken up and rearranged to provide a proper layout. It takes only comparatively inexpensive connections, comparatively short and easily made connections to make this terminal available to any of the existing railroads. And so, it has seemed to me to disturb the invested expenditure the least, that is, the least of any of the plans I have seen presented.

Fourth, it offers the best and most approved method for handling baggage and express without interference with the passenger movement provided for. By that I

mean that the topographic situation of the terminal is such that the baggage can be handled away from the passenger platforms at the end of the platforms, away from the concourse either overhead or underground, without interference with the passengers on the platforms.

(Tr. 799-800.)

* * * * * * *

A. It provides, fifth, for trains heading or backing in as circumstances may dictate. There is a great deal of discussion pro and con of the methods of handling trains into terminals, and that fact would seem to indicate of itself that there are advantages to be obtained in each way of doing, and this plan will provide for the trains being operated either way as may become most suitable. Sixth, it best conforms to the physical, topographical and geographical conditions at the plaza as related to the urban, interurban and subway carriers. I say that because I believe that the Pacific Electric lines coming in from the north division pass the south end of the proposed terminal and can continue to be operated on the lines which they are now operated on until conditions become so congested that a subway is demanded. When it is demanded, it can be constructed without interruption to the present routing down Los Angeles Street, or down San Pedro Street, until the subway system is practically complete and ready to turn the trains into the system. The subway system as suggested or outlined provides a loop running on Main Street, Hill Street, and north to Sunset Boulevard, and south to some point in the neighborhood of Tenth

or Twelfth Street, as business conditions and congestions may define at the time the subway may be necessary. It is not my intention to suggest at this time a subway is necessary. I don't believe it is. But I believe in laying out a terminal with the future in view. We should provide that it should be made easily accessible to such a subway terminal. I call that loop the subway or interurban terminal because I believe the time is coming that we will have to get away from the interurban stub terminal. I don't believe that is going to be adequate to handle the business of Los Angeles at some reasonably near future time, and I think it will be admitted that a loop on which trains can come in from the interurban lines and pass around the loop, delivering their passengers to subway stations at various intervals, various points at different intervals on the loop, where they are most demanded, is the best solution of the interurban terminal problem. I say it is the best topographically, it is the best topographical situation because the elevation of the streets at Main Street and Sunset Boulevard and Aliso Street are enough higher than the Alameda Street track so that by the slight depression of that the necessary current can be had and still keep the entrance floors and the facilities which are needed in the terminal, but not necessarily located on the train floor, still on the ground floor reached by the surface car systems and by the vehicular traffic. It also provides for a Pacific Electric, near the subway station, when the subway system may be constructed, passing directly south of the concourse across the way from the stub end of the team tracks, so

that by providing one or two station tracks of regular through routing, the Pacific Electric cars need not be interfered with by the set out cars which were solely or particularly station terminal business. The same arrangement can be provided on the route going north on Main Street west of the terminal and the cars would unload substantially at the westerly end of the concourse.

Seventh, it is convenient for the rapid handling of mails to the general postoffice. If the scheme suggested is followed out, I would straighten Aliso Street to run directly into Main Street. You will notice it is directly straight towards the Federal Building, and the Federal Building itself is a very short distance from the terminal, so that mails to the general office could be handled with a very short subway or tube without being handled on service trucks or anything of that sort at all, and be handled very rapidly. It provides means for having all general offices of the railroads, express companies and allied facilities housed conveniently under one roof. I think that is desirable and it does not require much argument.

Nine, it conforms to the requirements given in the above extracts from the manual of the American Railway Engineering Association, which represents the best engineering practice in this country.

(Tr. 801-803.)

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Commissioner GORDON. Is it your claim that such a terminal as you have laid out there will effect a saving in the operation of handling passenger traffic?

A. I would say eventually, yes.

(Tr. 809-810.)

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Commissioner GORDON. Yes, and next to that, what economies will result from the establishment of the terminal at that point?

A. I am not prepared to argue for the economies of the location, but for the convenience which is deemed necessary, and as a part of the scheme to place the terminal at the plaza and so enable us to eliminate grade crossings by putting the approaching railroads near the river.

(Tr. 810.)

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Redirect Examination.

Mr. Barnard, does your plan contemplate the eventual removal of the tracks on Alameda Street?

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A. Well, it is my personal opinion, although I was not asked to include that in this plan, that the tracks on Alameda Street should remain as a limited switching track, or at least for the time being, until the industries may readjust themselves to a lateral system of tracks from the river, and I am not at all sure but what the tracks would best remain on Alameda Street as the westerly limit of the industrial district for all time.

(Tr. 832.)

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A. * * * My idea is there that, with the elimination of the through service on Alameda Street, you will not have a serious condition of grade crossing

elimination. If it is a limited switching movement on Alameda Street, limited between 12 at night and 4 in the morning, or something of that sort, you will not have a dangerous condition.

(Tr. 834.)

We have 3174 transfers out of 249,650 people, or we have 12 people in 10,000 which people would avail themselves of a union facility as spoken of. (Tr. 930.)

H. B. TITCOMB,

recalled.

Redirect Examination.

Mr. DURBROW. Mr. Titcomb, will you please state briefly what this exhibit is designed to show, and how it was prepared, and from what data?

A. This exhibit was intended to show what money or what new money a terminal company must provide to carry into effect the plan known as the Business Men's Stability Association plan. It was gotten up, at my request and direction, to roughly indicate in a preliminary way the general cost of a facility such as was outlined on that plan. The total of that amount of money was $14,494,100, the new money to be provided. You will note the estimate does not include the reimbursement of the company, Southern Pacific Company, for the facilities that would be abandoned or the property that would be lost or depreciated in that $14,000,000. You will note there would be a direct loss to the Southern Pacific Company of $5,444,475.

Q. Are the figures shown upon this exhibit illustrative and would they be applicable generally to any

plan that might be formulated for the constructing or erecting of a depot at the plaza? (Tr. 959, 960)

A. Yes sir.

Mr. DURBROW. Mr. Titcomb, on the last page of your exhibit you have undertaken, as I understand it, to sum up in a general way the advantages and disadvantages of the location of a depot at the plaza as compared with the plan which has been proposed by the carriers in this case, and will you state briefly what your conclusions are from a study of the entire situation, as you understand it.

A. Well, the statement I have made here refers in general to a plan of a depot in the present Southern Pacific location as compared to a depot at the plaza, either I might say of the Central Development Association or of the Business Men's Stability Association. In other words, the points in favor of the plan as proposed by the Southern Pacific and the Salt Lake would be briefly as follows: 1st, we have a situation of transcontinental railroads in one centrally located station; 2nd, we have a second depot, or one such, a few blocks away; that would be the Santa Fe; 3rd, improvement in approach account getting rid of Alameda Street traffic; 4th, to eliminate all grade crossings, as stated, at cost of some millions for viaducts; I don't need to elaborate on that; the plan lends itself to the future elimination of all the grade crossings along the river as from time to time it becomes essential and necessary; 5th, no greater proportion of the million chargeable as expense of the city than we now have of the plaza schemes; that is, with reference to the viaducts there

is no greater proportion chargeable to the city on this scheme than there would be on the others, if we keep the depot in its present place; 6th, there would be no loss of values anywhere; 7th, with economical expenditure of capital money and use of facilities, that is, we can use our own facilities, general lay-out and properties we have, without going into vast sums of new money; 8th, on completion of the scheme we have but 12 passengers in a thousand to transfer. That is the figure I read into the testimony a little while ago, based on the best data I could get. 9th, all surburban business handled by the Pacific Electric Company, the Pacific Electric will come right direct to the depot, and we will get a direct connection; 10th, there is no general resulting loss in time or convenience that would call for the added $17,000,000 of loss and expenditure. (Tr. 961-963)

Los Angeles, Cal., November 21, 1917. 10 o'clock A. M.

* * * * * * * *

H. HAWGOOD,

recalled.

Direct Examination, resumed.

Mr. SIMONS. At the former hearing, Mr. Hawgood, you presented a map or outline study which was introduced in evidence and marked Central Development Association's Exhibit No. 4. What was the purpose of that map or outline study?

A. The intent of the map and its purpose was to make a test of whether the area bounded by Alameda Street, Macy Street, Lyon Street and Aliso Street was sufficient in which to install enough tracks to accommodate the Union passenger depot.

(Tr. 968.)

* * * * * * * *

Q. What is the relation, generally speaking, of the throat, of the capacity of the throat, to the capacity of the yard as determining the use of the property? What relation has it, the two elements?

A. I have a 6-track throat to 14 tracks. The 6-track throat is put in because it contemplates that in the future it will be necessary to have some 28 tracks or so and then the ratio would be good and in accordance with good practice. I have studied the ratio between throat tracks and platform tracks from quite a number of the important stations of the United States, and the ratio runs about 4 as an average.

Q. Four tracks?

A. Four platform tracks to one throat track. The highest ratio I could find is 5⅓ to 1. That is on any stations that are of any importance or worth considering.

Q. And your 6-throat track would afford under that investigation of yours and under that good practice access for how many tracks?

A. Six tracks would be good for 30 tracks. It might be well if I would cite the stations that I have used, or you might desire that I should file those with Mr. Sachse?

Commissioner THELEN. How long is the list, Mr. Hawgood?

A. It is very short.

Commissioner THELEN. Please read it, then.

A. Seven stub stations I examined at Dearborn Street, Chicago, showed 10 platforms to 4 throat tracks. South Boston, 28 platform tracks, 8 throat tracks. Chicago & Northwestern, Chicago, 16 platforms, 6 throats. The lay-out of the Chicago & Northwestern, as far as throats is concerned, mine is very much similar to it—16 platform tracks. St. Louis: 32 platform tracks to 6 throats. That is the highest ratio that I have found. There may be others, but I have been unable to find them. Washington, 28 platform tracks to 8 throat tracks. Seattle, 13 platforms to 4 throats. Broad Street, Philadelphia—that handles over 500 trains a day—16 platforms to 6 throat tracks. The ratios range from 2½ to 5⅓.

Then I examined two combined stub and through stations, partially stub and partially through, Baltimore & Ohio at Camden, Baltimore, 7 platform tracks to 4 throat tracks; at St. Paul, Minneapolis, that is a comparatively new station, quite modern, 22 platform tracks to 7 throat tracks. These ratios range from 1¾ to 3⅛ platform tracks to one throat track. There are two through stations, Baltimore—I think that is Mount Royal—7 platforms to 4 throats. And Kansas City, that is one of the best examples we have of the union through station at present, 16 platform tracks to 6 throat tracks. So the ratios range from 1¾ in this case to 2⅔.

Mr. SIMONS. The relation between the through track stations and the stub track in regard to this subject is what,—which is the larger requirement?

A. I had an impression in my mind that the through track station would show slightly the best, but when I gathered together the statistics I found the stub stations showed more capacity than the through. I think I can give you the—

Q. Just never mind explaining that unless you so desire.

A. I would like to read it in if it is for nothing else than to show I have made a complete study of this thing and not just jumping at conclusions, unless it is trying to the Commission.

Commissioner THELEN. How long is it?

A. Very short.

Commissioner THELEN. Suppose you give it to the reporter and let him run it in the record, and we will read it, unless the railroad counsel desire to have it read.

Mr. HALSTED. No, let it go in the record.

A. It is not in shape so that I can give it to him.

Commissioner THELEN. Suppose you revise it and give it to him later.

A. I will simply state the conclusion.

(Statement referred to is as follows):

"Nine out of twenty-six stations are 'stub' stations, handling 1926 trains daily on 108 platform tracks; four are 'combination stub and through' stations, handling 406 trains daily on 45 tracks; and thirteen are 'through' stations, handling 1656 trains daily on 97 tracks. The

total 26 stations handling 3697 trains daily on 250 tracks.

"The average number of trains handled per track per day was 18 for the 'stub' stations, 9 for the 'combination', and 16 for the 'through' stations.

The number of trains handled on one track during the busiest hour of the 24 was practically the same for each one of the three types, namely, about four.

The maximum capacity per track in the busiest hour was 8 trains for the 'stub', 5 trains for the 'combination', and 6 trains for the 'through' station.

The foregoing statistics of operation show that the 'through' station instead of being superior to the 'stub' station is, as a matter of fact, somewhat inferior."

(Tr. 975-978.)

* * * * * * * *

Q. Now, in respect to the facilities of the station itself will you describe generally and concisely the facilities which are shown and provided for in your depot track lay-out?

A. The station is what is termed two level station, the platforms and the connecting baggage rooms and the express companies' space are on the street levels of Los Angeles Street and Macy, about 3 acres have been set aside parallel to Macy Street so that transfer wagons could conveniently drive in from the street and also the baggage wagons, the United States mail space and the express companies.

Q. Is there any fill or embankment such as was pictured in one of the studies of this property on which the trains enter, or do they enter practically at grade?

A. Practically at grade.

(Tr. 979-980.)

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Commissioner THELEN. This profile to which reference has been made, from North Main Street to Aliso Street, at the west bank of the Los Angeles River, may be introduced and will be marked

EXHIBIT No. 6

of the Central Development Association.

Mr. SIMONS. Just one word before leaving the question of the trackage itself. What property lying between the depot itself and the river, what improved property or buildings, do you destroy or attack?

A. No property of any moment. The curve coming from the Santa Fe tracks on the south passes at the end of the gas company, Los Angeles Gas Company's properties, not their properties but passes the end of their structures, their buildings, and between the end of their structures and their large fuel tanks on the other side of the street, so that no properties of any particular moment in the way of improvements are touched.

Q. And speaking of the north leg, is that true also?

A. The north leg is the same.

Q. Where is the main entering depot, or where is the portion of the depot for the reception of passengers and the ticket office and facilities of that character?

A. The main building is on the plaza level, and on the original design from which this exhibit was first made the front line of the building had been some 80 feet or so west of Alameda Street, and in reconsidering it was thought it would give a wider space in

front of the building—it would give a better appearance, easier slopes, if the building was pushed back so as to be built almost entirely over the street. This could be done on arches, Alameda Street being depressed for its full width about three feet, a little over three feet.

Q. Who were your consulting architects in respect to the construction of the building?

A. Curlett & Frary. I have here the blueprint taken from their designs, which shows the manner of the cross section of the building and the crossing of the street.

Q. You speak of another treatment of that property with the depot, for which they have also prepared a plan as an alternative plan?

A. Yes, they have. They contemplated the crossing of Alameda Street on one great arch which spanned the whole street. I am in favor, if the permission of the city was obtained, of crossing it on two. While the single arch is perfectly strong to carry all the load, it might carry to the eye the impression that it was weak because there was no prop in the middle. It also simplifies the construction and takes a little less concrete.

Q. Is the spanning by a single arch practicable?

A. Oh, yes, it is only 96 feet from side to side.

Q. That profile or section of the plan of this first proposed plan, have you it there?

A. I have just one copy. Mr. Curlett and Mr. Frary have the others, and I suppose they will introduce them later on. This one copy I can introduce now.

Mr. SIMONS. I have the blueprint of the other treatment here as well and will get that out. I offer that in evidence.

Commissioner THELEN. This blueprint which is marked "Section through Plaza Terminal", to which reference has just been made, may be introduced and will be marked

EXHIBIT No. 7

of the Central Development Association.

Mr. SIMONS. I desire to offer at this time, in connection with this former exhibit, a sectional plan of the depot with the single arch treatment. I am having blueprints made of these and will have them here in the morning.

Commissioner THELEN. This blueprint to which reference has just been made may be introduced and will be marked

EXHIBIT No. 8

of the Central Development Association.

(Tr. 981-983.)

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Q. Will you take this (handing document to the witness)? Mr. Hawgood, what is that paper that you have in your hand?

A. It is a drawing of the front elevation of the Plaza Union Terminal on a scale of 1/16 of an inch to the foot.

Mr. SIMONS. I offer that.

Commissioner THELEN. This drawing to which reference has just been made, and which is headed "Front

Elevation of the Plaza Union Terminal", may be introduced and will be marked

EXHIBIT No. 9

(Tr. 983.)

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Commissioner THELEN. This map to which reference has just been made, which is marked "Map showing main tracks of the Southern Pacific, Santa Fe, Salt Lake and Pacific Electric Railways, also proposed approaches" may be introduced and will be marked

EXHIBIT No. 10

of the Central Development Association.

(Tr. 984.)

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Q. How do you provide for the entrance of the passengers at the plaza to the trains; what is their access and means of doing it?

A. They pass out of the main waiting room into a concourse which extends over Alameda Street and for the full length of the building, and from that concourse they pass through the gates which will be numbered, and down ramps on 10 per cent slope to the respective platforms which they wish to reach.

Mr. SIMONS. I have here a floor plan of the terminal corresponding to the front elevation.

Commissioner THELEN. This blueprint which is marked "Floor Plan of Union Terminal Plaza Level" may be introduced and will be marked

EXHIBIT No. 11

of the Central Development Association.

Mr. SIMONS. You have just described the passing from the concourse of the station to the tracks at a ten per cent grade.

A. Yes.

Q. What can you say, sir, in respect to that being a proper and convenient use and figure for the use of passengers?

A. It is recognized as the grade for ramps which should not be exceeded. I state this on the authority of the American Railway Engineering Association, an organization which has members representing some I think about 226,000 miles, or perhaps more than that, railroads in the United States, and their committee on this matter reported that station ramps should not exceed 10 per cent. So, taking that as my guide, I have designed mine on 10 per cent with a landing or flat half way up the grade.

Q. Are you familiar with the Arcade station in this city?

A. Yes.

Q. What are the grades there?

A. I heard Mr. Titcomb state them. If I heard him right, he said there is 15 per cent descending and ascending to the platforms, and 18 per cent on the exit to the street.

(Tr. 985-986.)

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Commissioner THELEN. This blueprint to which reference has just been made, which is marked "Plan at

Alameda Street level", "Plaza Terminal", may be introduced, and will be marked

EXHIBIT No. 12

of the Central Development Association.

Mr. SIMONS. Are there any other suggestions or matters, Mr. Hawgood?

A. Yes, there is one in regard—

Q. In regard to the station itself?

A. In regard to the station, and that is the provision made for the United States mail. It is obviously of advantage to the public service that all the incoming and outgoing mail on the steam roads should center at one point. With this union station they would so center, or with any union station they would so center. But with this one it has the particular advantage that it is within 3000 feet of the general post office.

Q. How many feet?

A. Within 2000 feet of the general post office, and also the custom house.

Q. And have you provided space on this floor plan for the railway mail service?

A. I have.

Q. In respect to what was yesterday referred to as the accessorial facilities—I think that was the expression which was used—for the depot and site at the plaza, so that it would be a complete operating plant, will you explain those facilities and where it is possible and where it is feasible to provide them.

(Tr. 987-988.)

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A. The plan which the Salt Lake and the Southern Pacific have put forward settled the coach yard question, at least so far as they are concerned. They have said where they want it, and this plan does not disturb any of the coach yards. They are all there, round houses are all there, and it is certainly far less distance, for instance, for the Southern Pacific to run from the plaza to their round house than to run from way down 6th Street. The details of that saving in operation, very large mileage which will be saved in handling light engines, I will introduce later on.

Q. Are you familiar with the location of the property on Alhambra Avenue, just east of the river, the Southern Pacific property?

A. The shop grounds?

Q. Yes.

A. Yes.

Q. The vacant property there which is in large measure in track now?

A. Yes, I knew it long before the Southern Pacific owned a foot of it.

Q. Is that a suitable and convenient coach yard facility or place for a coach yard, adaptable to the use of this plaza terminal?

A. It would make a very handy place to the plaza. (Tr. 989.)

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Q. Have you studied, sir, as an engineer of this association, the accessibility to the station of the various lines of communication for passengers of all kinds in all ways?

A. I have.

Q. Will you briefly give the result of your investigation?

A. I have considered it under three different forms of transportation to the stations: Pedestrian, auto and the street railroads, electric railroads. There is practically no difference whatever so far as the man who walks is concerned, from 5th or 6th Street down to either 6th Street or the plaza, that is, the Arcade depot of the plaza. As a matter of fact, the minimum between Sixth and Fifth, or Spring, which is fairly the center of the business down there, it is a matter of 60 feet difference.

Q. Take the travel by vehicle.

A. I would like to draw attention to one more thing.

Q. Yes, go ahead.

A. And the distance, take the principal hotels on Spring and Main Streets, from Second Street south, the Fifth Street station has the advantage of only 250 feet. As far as the auto travel is concerned, which is very largely in favor of the plaza, and to reach the Fifth Street station now, the autos must cross the heavy travel of north and south streets in the congested district. It is delayed, slow time and dangerous.

Q. How about the width of the streets, east and west streets?

A. They are comparatively narrow. Now, if they go to the north to the plaza, they are going with the current and not crossing it and they make better time and there is less risk. At the outlying districts I had the opportunity of points taken that would cover a definite

routing from Hollywood, Santa Monica, San Pedro, Whittier and San Gabriel Valley points, and they all strike some common point on each of the routes within the city. In summing this up I found that the mileage to the Plaza station—there are some 12 points taken here, taken, I believe, without bias, at least, I tried to do it—sum of the distance to the Plaza station was 15.03 and to the Fifth Street station was 24.21 miles. So a man would have a saving both in this instance and in speed.

Q. You are using the station which you have been calling the Arcade—you have been calling it the Fifth Street station?

A. It is one and the same thing.

(Tr. 992-995.)

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Mr. SIMONS. Judge Stephens suggests to me that, as you have also used the Sixth Street station once in a while, when you used these expressions of Fifth and Sixth Street stations you meant the Arcade station?

A. Yes, I did, because it stretches from 5th to 6th, but much of our talk is directed to 6th Street. Now, the other branch of the accessibility to the public is the street cars, and I think the importance of that is shown by the fact that in the year ending the 30th of June, 1915, the Railroad Commissioners' report shows that the Los Angeles Railway carried 168,905,448 passengers, the Pacific Electric somewhat over 72,000,000, and the steam roads throughout the whole of the State of California in the same year only carried 37,000,000.

Now, the plaza is today served by eight routes, by the Los Angeles Railway, the yellow car lines, without any transfer, and I think the measure of accessibility, as far as the street cars are concerned, is the point that can be reached from most places without having to change cars, without delays and nuisances which are particularly bothersome to strangers, and we claim here we are careful of the strangers. Now, the aggregate mileage of these routes is 97.8 miles. The Fifth Street station is served without transfer by only two routes of an aggregate mileage of 18.2 miles, so that if mileage is any measure, and it must be some kind of a measure, all the passengers that can reach either of these two stations without transfer—there are over five times as many can reach the plaza without change of cars as can reach the 5th Street station, you see. And it is not possible to change those routes. The lay of the country is such, and the business is such, that the main travel is north and south and not east and west, and it would be a violent divergence of the natural line of travel to swing that east down to the 5th Street station. I have prepared a diagram which shows where those routes come from.

Mr. SIMONS. I offer that in evidence.

Commissioner THELEN. This diagram which is marked "Diagram showing routes of Yellow Car lines, showing Plaza and 5th Street Station", may be introduced and marked

"EXHIBIT 13

of the Central Development Association."

(Tr. 997-998.)

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Mr. SIMONS. At this point, Mr. Hawgood, I desire to ask you if you have considered, in connection with the Salt Lake and Southern Pacific plan, the Pacific Electric union with it and its method of reaching Los Angeles from the Valley towns, so-called?

A. Yes, I have given that quite a little study because I live over on the Pasadena side and have opportunities to know the travel on that line.

(Tr. 999.)

* * * * * * * *

Q. What is your suggestion?

A. Well, Mr. Titcomb suggested something here. I have no objection to Mr. Titcomb's suggestion, only a majority should rule, and the transfer car, the little jerk-water, can run to the junction and the through car follow the regular route. It will be no relief at all to the Main Street traffic by having the transfer car, because there must be a transfer car to every through car. Even those of us living in the suburban towns have got to do one of two things, either fall heartily into line with the fast line on Pasadena which they are designing to put through and so change our mode of transportation, or else change our habitation. And then of far more benefit to us at the present time than the route along the river would be the four-tracking of the Pacific Electric from the present end of the 4-track line near Eastlake Park to Anderson Street and Aliso. There has been recently built car barns between Aliso Street and Echandia Junction, and the quantity of traffic there has vastly increased and not one bit of increased facility has been made. It is morn-

ing and night held up on that piece of track. It would be better to have four tracks there than to have the costly arrangement down the river. And the line down the river will benefit in point of time the Pasadenans about a minute and a half, that is all, for a large expenditure of money. It can never be a fast line. It is slow freight. The present design when you leave Aliso Street is to climb up over the bump and down again on the bank to this 20-degree curve and about 4 per cent grade, and the safe speed on that will be about 12 miles an hour. Then you get a stretch which represents, I think, about—well, I forget what percentage it is, but there is a little stretch down the river where they could make all the time they could, and then it starts again on a grade, and if they make any stop for the 5th Street depot at all they will go and cut into the time, and then when you enter the station, where they come to the junction with the Long Beach line which bring all the trains in from the south, Long Beach, Whittier, Santa Ana—they all come in there—and it will be just one slow procession from there into the 6th Street depot. It can not be fast because the cars, as they arrive at 6th Street, have to be passed out to the various tracks and have to keep out of the way, and I have figured the time out, the time they run, over and over again, to 4th Street and the time to 6th Street over the elevated structures, and there is not to exceed two minutes difference.

Q. Will you take it now, sir, the question of the operating costs of the Plaza station, take that up

with what you consider to be the elements which affect it either in the way of increase or decrease?

A. There are certain elements in the cost of operation of a road which are affected by distance, curvature and rise and fall, such distances as would be affected here would not affect train wages, and I have taken the reports of the Railroad Commission, of the cost of various items and find them to be 35½ per cent of the total operating costs per train mile affects—would be affected by such changes as we could make here. Of this distance—of the 35½ per cent, distance affects 19.9, curvature, 24.1 per cent, and rise and fall 5.8 per cent, and omitting all the arithmetical processes, I came to these conclusions: that the operation of one additional foot of distance per daily train per year costs 2.4 cents; that the operation of one additional degree of curvature per daily train per year would cost 2.3 cents, and the operation of one additional foot of rise and fall per daily train would cost $1.40. We can not apply those prices on just the trains we run today—about 93 of them today.

Q. How many?

A. About 93. We must look forward to the future of about double that number, at least, because that would only carry us forward ten years, and I find the following distances: daily saving in distance will be as follows: Southern Pacific trains would average 8270 feet per train. The Santa Fe would average 1340 feet per train, and the Salt Lake 2170 feet per train.

Q. Does that include switch engines?

A. No, this is the line.

Q. Now, just regarding the movement of main lines, main line trains, is that it?

A. Main trains.

Q. No switching engines or taking of cars back and forth?

A. No, I will come to that later. The total daily trains on the assumption of 160 trains would amount to 748,820 train feet per day, and capitalizing it at the values I have given, it would pay 5 per cent on $359,540; and the daily saving from increased curvature would amount to a daily saving of 13,340 degrees, the capitalized value of which at 5 per cent I placed at $61,360. Then there is the rise and fall. Every train that goes in or out of the 5th Street station under the Southern Pacific and Salt Lake project, has to climb 25 feet over the river bank tracks. It is not a matter of which way they go, but they have to get up that 25 feet, have to climb that and then go out at the other end. The capitalized value of that rise and fall amounts to $112,000. Summing up, the total savings from reduced distance and curvature—

Commissioner THELEN. Pardon me a moment. Are these figures which you give, are they reductions in operating expenses, or capitalized reductions of operating expenses?

A. Capitalized reductions of operating expenses.

Commissioner THELEN. In other words, the reductions in operating expenses are only 5 per cent of these figures that you give?

A. Yes, and I will give you the total of operating expenses, too.

Mr. SACHSE. The difference that you show here is between your plaza plan and a proposed plan of the railroad?

A. Yes sir.

Q. Not the present operation?

A. No, the plaza plan and the proposed plan. Recapitulating, the operating savings from this every year, from distance, $17,972, capitalized at 5 per cent, $359,440; from curvature, $3,068, capitalized at 5 per cent gives $61,360; from rise and fall, $5600, capitalized at 5 per cent, $112,000. Total saving in operating expenses per year, $26,640, which, capitalized at 5 per cent, is $532,800. So that you could afford to pay off 5 per cent, you could afford to pay $532,800 more for the plaza project than you could for the 5th Street project and it would be the same on your operating expenses, total expenses.

Mr. SACHSE. Do your calculations take the Santa Fe into consideration?

A. They take them in. I also make the assumption that the Santa Fe operates into 5th Street so as to bring them both on the same basis of comparison.

Mr. SIMONS. It does not include, of course, any movement of electric trains.

A. No, that is a separate proposition. Now, the saving in light engines, the Southern Pacific would save 1.9 miles on every engine they took from the train to the round house. The Santa Fe, there would be practically no saving of loss. It would be practically a stand-off. The Salt Lake would save practically a mile and a half on every engine they took, and I figured

that the total aggregate savings daily on light engines would be 177 miles. That would make a yearly saving on light engines of 64,824 miles. Now, on the turning of the 'Y's', there is a very large—still larger difference. It amounts to very close to 60,000 miles a year. (Tr. 1000-1004.)

* * * * * * * *

Commissioner GORDON. Are the members of the Central Development Association largely interested in property around this proposed depot site?

Mr. SIMONS. I should say that many of them are interested in property in what is known as the north section.

Commissioner THELEN. I think it may be stipulated in each case that practically every one that comes here has an interest, and I think it is better for us all if we look the situation frankly in the face. The railroads have an interest, the Central Development Association has an interest, Mr. Goudge's friends have an interest, and they have all of them an interest, and if we look that situation fairly in the face and then forget it and simply devote ourselves to the best plan and what is the best interests for the City of Los Angeles we won't get side-tracked on any immaterial information.

Commissioner GORDON. That is just what I wanted to get, was the information that you state, Mr. President, so that we could look at the picture.

(Tr. 1008-1009.)

* * * * * * * * *

Mr. SIMONS. With reference to the territory covered by the proposed and present routings and construc-

tion, how familiar are you with it and how long have you been with its topography?

A. Since 1888 as the resident engineer of the Southern Pacific, having charge of their track, bridges and buildings in Los Angeles to El Paso, from 1888 to '95, I became very familiar with the topography around Los Angeles, with the yard situations, and was active in the construction of all the yards up to that time in Los Angeles, including the building of the first Arcade Station. After that I was consulting engineer for the Los Angeles Terminal Railway and made a special study of the methods of crossing the river and of the depot sites that were available on the west side, and subsequent to that, as chief engineer of the construction of the Salt Lake road, I became very familiar and studied the situation very closely as to depot sites. (Tr. 1011.)

(Los Angeles, Cal., November 22, 1917.—9:30 o'clock, A. M.)

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Q. Coming now down to the question of the construction of the Southern Pacific-Salt Lake plan, and calling your attention particularly to the yard question, will you state your examination and your results as to the sufficiency of that service at the Arcade station?

A. The plans presented, as I read them, contemplate a 2-throat track. The capacities of throat tracks in handling trains in the busiest hours, as shown by the statistics of from 20 to 30 of the important railroad stations, show that the 2-throat track would only be cap-

able of handling the present business of the Southern Pacific, with a reasonable allowance for its growth. For 80 minutes in the morning it handles trains at the rate of six per hour, and a 2-throat track would probably take care of nine or ten per hour, and no more; it could not take care of the present, or just about barely take care of the combined peak of the Southern Pacific and Salt Lake of today. And I do not believe there is an instance, at least I have not been able to find one, in the United States of an important railroad station handling more than one road, that has nothing but a 2-throat track.

Q. Do you know the location of this throat?

A. Oh, yes, it has been very clearly described here by Mr. Titcomb and by the exhibits.

(Tr. 1012-1013.)

* * * * * * * *

Q. * * * What effect, and what can you say as to that construction at that point, considering the elevation and the use of the cross-over with the freight tracks from the north and the south, explaining that fully in relation to its capacity of the yard?

A. It would make what I should call a slow throat. The movement through interlocking switches is always slow, and with the freight service coming down Alameda Street and crossing through it, a direct crossing to cross all the entering tracks would make it still slower.

Q. Will you describe the question and the situation which arises in the operation of the trains, considering the incline and the coming to a level at the south end of the umbrella tracks, the effect of this

and the operation of the trains to the east with which they are handled?

A. It is planned, as I gather from the exhibits, on a one per cent grade with a 10-degree curve. I don't know whether the 10 degree curve is to be compensated, or not. If it is not compensated, then it would have the equivalent of a 1.4 grade. If it is contemplated, it would remain one per cent. Then the one per cent descends right to the throat and through the throat, because it is proposed to terminate at the south end of the umbrella sheds. All of the switching to the south and east has to climb a one per cent grade right at the start without having acquired any momentum. That again would make that a very slow throat.

Q. In respect to the use of interlocking switches on the elevated as indicated upon that plan, Exhibit No. 18, as located by Mr. Titcomb, what can you say as to the question of derailment, and the use of the interlocking switch at that point, if anything?

A. It is usual to provide a derailer for an interlocking plant so that if the signals are disregarded the train leaves the track, and such leaving of the track is sometimes accompanied with disastrous results.

Q. Considering the construction of this elevated track, or viaduct as described by Mr. Titcomb, in respect to its material, what do you say in regard to the use of wood, itself, and in the way in which it is used here, and in the portion of the city in which it will be constructed?

A. I understand the project contemplates the use—that is, the railroad project, the use of creosoted timber. As far as mere strength is concerned, that would be perfectly satisfactory, but there is the great hazard of fire, and in an urban district, with houses and warehouses all around, that risk is extremely great. I do not think a wooden structure creosoted or uncreosoted, is a proper construction through a city. Then the question of the life: I have been familiar with the use of creosote in railroad structures for over 40 years. It is a very old thing. The life of creosoted timber is very much in dispute. The conservative engineers, in figuring the financial side of it, adopts twenty years as its life. And the general rule applies that, if any structure of a permanent nature can be built which does not exceed 50 per cent of the cost of the timber structure, it is a financial benefit to use that kind of construction. And another thought that is now going through the minds of engineers, and is having considerable effect, and it is not confined to engineers: the conservation of the resources of the country. Timber is gradually getting more and more scarce. We have been shamefully prodigal with it on the Western coast, where it lay right under our fingers. And it should not be used for structures, particularly in such locations as this, where more permanent material, such as concrete or steel, can be used in its place. The conservation of the country's resources demands it, if nothing else.

Q. Has there been any discussion of this subject of wooden trestles in cities in engineering authorities of the country?

A. Yes.

Q. Where?

A. A committee report in the American Railway Association last year, or I think it was this year, committee appointed of about 18 members, and they advised against its use in urban districts. They also placed its financial life at 20 years.

Q. What would you say as to the appearance or general effect upon the territory of that sort of structure?

A. Oh, there is no beauty at all about a wooden trestle. It is just clumsy, and that is all you can say about it.

Q. Have you the figures here with you as to the cost of your track lay-out?

A. Yes, sir.

Q. Will you give the details of the construction?

A. My estimate is of a general character. The details can be furnished, if desired, at any time. The total estimated cost of the plaza project, including the trackage on the east bank of the river and the bridges, is $2,965,499, and it is composed in general as follows: buildings, $750,000; platforms and accessories, $75,000; interlocking plant, $75,000; two concrete bridges over the Los Angeles River, $160,000, and a concrete bridge on the east side, $42,840. I have taken that from Mr. Titcomb's estimate and assumed that was the Arroyo Seco bridge. Lowering Alameda Street, $18,500, and that includes the repaving. Lyon Street viaduct, $148,500; real estate, $859,190. Total, $2,129,030. Adding 15 per cent for overhead brings that up to—which would be $319,354 added—a total of $2,448,484. And then the tracks, grading, and so forth, on the east bank, includ-

ng this 15 per cent, $517,115, making the total of 2,965,499.

(Tr. 1014-1018.)

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Q. Was an estimate made, and have you had an stimate made of the cost of the Southern Pacific-Salt ake project?

A. I have.

Q. First, with regard to unit prices, have you a hedule of the prices there?

A. Yes.

Q. Will you please read them into the record?

(Tr. 1019.)

* * * * * * * *

A. The plaza project and the Southern Pacific-Salt ake project. Applying those prices to the Southern acific-Salt Lake railroad proposition, we make the tal of their project $3,618,100, and of the Pacific lectric road, $2,230,999, making a grand total of $5,-9,099.

(Tr. 1019.)

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Mr. Simons. Mr. Hawgood, in reference to the ques-on of the destruction or taking away property from y of these railroads, will you briefly describe what ffect, if any, in that respect, the construction of the aza terminal of the Central Development Association ould have in this matter?

A. It would release to the railroad companies for her purposes properties valued in the neighborhood $7,000,000.

(Tr. 1023.)

H. C. NUTT,

a witness called on behalf of the Los Angeles & Salt Lake Railroad Company, being first duly sworn, testified as follows:

Direct Examination.

Mr. HALSTED. What is your position with the Salt Lake road, Mr. Nutt?

A. I am general manager.

Q. How long have you been general manager?

A. Since May, 1912.

Q. What experience have you had in railroading?

A. Well, after I graduated from college in engineering—

Q. What college of engineering?

(Tr. 1045.)

A. Sheffield School at Yale. I was employed in the engineering department of the Burlington Railroad for about 7 years.

Q. At what point?

A. At different points in Nebraska and Kansas, in the construction and surveying of railroads, and after that I was transferred to the operating department and remained with the Burlington Road until 1906.

Q. How many years was that from the time of your graduation?

A. That was in '83—23 years. And in that time, while I was only for 7 years director of the engineering department, the rest of my time I was engaged in the construction and maintenance and operation of different parts of the road. At the time I left that road I was general superintendent of the Missouri District at St. Louis. From there I went to the Michi-

gan Central, as general superintendent of that road at Detroit. I remained there a year, and then I went to the Northern Pacific as vice-president and general manager of the Western District of that road, at Tacoma, where I stayed for 5 years. And I left there to come with the Salt Lake, 5 years ago last spring.

Q. Will you please state what steps you have taken since you have been general manager of the Salt Lake Railroad to acquire or construct a new passenger station in the City of Los Angeles.

A. When I came here, of course, I realized, as everybody else did and still does, that our terminal facilities, both freight and passenger, were not what they ought to be in Los Angeles, and our first idea was that we would build a passenger station of our own on the east side of the river. We made some plans for the structure and track lay-out that we thot would be adequate to take care of our requirements for a good many years, and proceeded to acquire the property necessary for it, partly by purchase and partly by condemnation, on the east bank of the river just south of Seventh Street. We completed the acquisition of the property and the preparation of the plans along in the early fall of 1913, and presented our application to the city council for the necessary franchises. The plans required some track changes and crossings of streets.

(Tr. 1046-1047.)

"A. * * * And when we applied for this franchise, it immediately precipitated the question of the separation of grades at Seventh Street, and our plan was made on the basis of Seventh Street remaining

at grade, as it is at present, and this application of ours, as I say, precipitated the agitation for a viaduct or separation of grades at least at Seventh Street. And after a good deal of discussion and talk both with the city officers and with the public bodies here, it finally culminated in their having this committee of engineers make a report on the solution of the entire terminal problem here in Los Angeles, and it eventually resulted in our having to abandon our plan of building at Seventh Street, because we could not build a station there that would conform to the grade crossing with this agitation for viaducts pending, and we did not feel we could build a station that would fit in with the viaduct at Seventh Street until the viaduct was built, so we just abandoned it.

Q. In other words, you could not build until

A. Until the question was settled as to what the grade of Seventh Street was permanently to be. So we abandoned that project, and that drifted along then until along in the summer and fall of 1915, when the Southern Pacific completed their new station, and then we having negotiations with the Southern Pacific looking to our use with the Southern Pacific of that station, and after a good deal of negotiation we worked out a tentative recommendation of Mr. Platt, who was then general manager of the Southern Pacific here, and myself, agreeing upon what we thought was a reasonable arrangement, which was for the division of the expense and the provision of necessary added facilities, that really contained all the essential features of the plan that we have since submitted to the Commission."

We thought that that was a very desirable solution of the passenger terminal situation so far as our two companies were concerned.

The present Southern Pacific station and the trackage they have there is ample to take care of the requirements of both companies for many years. The location we thot was admirable. The use by the Southern Pacific of our tracks on the east bank of the river, both for their freight and passenger trains, would eliminate everything from Alameda Street except purely a switching service to serve the industries there. And it seemed to us that this plan, while it immediately eliminated a very large number of grade crossing movements in Los Angeles and gave us a satisfactory passenger terminal, was one that would not conflict with any thing that the Santa Fe might want to do in the future, or in the general solution of the problem that might be determined upon.

* * * * * * * *

A. We finally settled upon that and recommended it to our superiors in April, 1916.

Q. Before there was this——

A. Yes, before there was any suggestion that the general elimination of grades or general solution of the terminal situation in Los Angeles would be attempted. It was something we did for our two companies. And after we submitted that recommendation to our superiors, it in the main was approved by them, and after a good deal of negotiation we finally agreed upon a contract that is executed by the executive officers of both companies. And the principal object of the Southern Pacific was to relieve their traffic

on Alameda Street and the principal object of the Salt Lake was to get an adequate passenger terminal, and we think the plan we have prepared and submitted accomplishes those two purposes. And I also think it will harmonize and fit in with any work that may be done for the still further separation of grades. If this plan of ours can be approved, we can go ahead with the construction of it. It will, as I said before, take all of the Southern Pacific traffic off Alameda Street, from the Hammond Lumber Company plant, which is about 16th Street, to the north end of the city. There will be no Southern Pacific traffic on Alameda Street, except purely switching service. It will give both of us an opportunity to get our passenger trains into this station with very few grade crossings, and those few grade crossings can be eliminated at a moderate expense. So that, by the addition to this plan or this agreement, the plan that has been agreed upon by the Southern Pacific and Salt Lake of a few viaducts at the river bank, both the Southern Pacific and Salt Lake passenger trains can get into the station without any grade crossings. The expense will be considerable but we feel it is not unreasonable, and both companies are prepared to proceed with the construction of their part of it.

Q. You have studied, of course, the engineering details, have you, of the proposed plan?

A. Yes sir.

Q. And as an engineer, and also as an operating railroad man, do you see anything objectionable in the plans?

* * * * * * *

A. I think they are practical.

Q. And safe?

A. And safe and adequate for the requirements of both of these companies for a great many years.

Q. You are familiar with passenger terminals in other large cities of the United States, are you?

* * * * * * *

A. Yes. It is hard to say how many years, but when I compare the Arcade station, both the building and the tracks, with the stations in very much larger cities than this in the East, I would not hesitate at all in saying to the people who are going to furnish the money that that station would take care of these two railroads in this town if it had one million to a million and a half population. It is a larger station, both in its station building capacity and its track capacity, than the Michigan Central Railroad had in Detroit when I was with it, and the Michigan Central is the principal railroad in Detroit. The others do relatively little business. And with all the handicaps we had in the way of a ferry—all the trains had to be ferried across the river and all had to come in with a road engine, and be taken out with a switch engine, and all that—we handled the business in that town without any delay or inconvenience with a smaller station than this one is here. The station that is occupied by the Pennsylvania, Burlington, the Alton & Milwaukee road in Chicago is not as big as this. Of course, that is being eliminated now. But it just shows what the ultimate capacity of a station is. It is hard to say just when you get to the point that you can't do any more business in a station, of course, but those 4 big railroads in Chicago have been doing their business

in that station since the early 80's and just now going to enlarge it.

Commissioner THELEN. You say that is just going to be eliminated. I am interested in that question. Just what is going to be done with that station?

A. They are going to tear it down entirely, close Canal Street and build a magnificent station that will take in Canal Street and a block west of Canal Street and also utilize the ground that is used in the present station. (Tr. 1047-1052.)

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Q. And did you consider that the Arcade site as a depot was more desirable than anything we had of our own on the east side of the river?

A. Yes, I do. (Tr. 1053.)

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Q. What do you say, as a railroad man, and having studied the development and growth of the city, of the location of a depot in the vicinity of the Plaza; do you think it would be right?

A. I think it would be a decided mistake. (Tr. 1054.)

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W. H. WORKMAN, Jr.,

a witness called on behalf of the City of Los Angeles, being first duly sworn, testified as follows:

Direct Examination.

Mr. STEPHENS. Q. Do you live in Los Angeles?

A. Yes, sir.

Q. How long have you lived here?

A. Some forty odd years, with exceptions that I should qualify that by saying I have been away from here a matter of some six years, traveling abroad and where my work took me to other places. (Tr. 1056.)

* * * * * * * *

Q. Now, coming back to the short period of time when you were absent from the city, will you state your mission as to those absences?

A. Something over a year I traveled abroad. In the first place, I should state that by profession and education I am an engineer, a graduate of Stanford University.

Q. I assume that was what took up part of your absences from the city, your profession?

A. Yes, I was there for two and a half years and graduated from that institution. Subsequently, after being engaged in business here with the Edison Electric Company, in which I was latterly assistant to the President, I traveled abroad for a number of years, and, naturally, I observed a great many things in connection with public utilities, the way they handled their entrances into the cities and that sort of thing. Subsequently, on my return, I was employed by the banking firm of N. W. Harris & Company of Chicago as their expert examiner. They loan a great deal of money, largely on public utilities. And after that I traveled pretty much over the country. Finally, they placed me in charge of an electric property in Seattle, which property I managed for 4½ years.

(Tr. 1057.)

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Commissioner THELEN. That is Exhibit No. 1 of the Southern Pacific and the Salt Lake.

Mr. STEPHENS. That is, I believe, a map of the plan of the two railroads. With the plan of the engineers that I have just referred to in mind, will you begin at the northern end and make such criticisms as you desire with reference to the grade crossings?

(Tr. 1061-1062.)

* * * * * * * *

A. On this offer of the railroad company there is, so far as the large body of citizens living east of the river is concerned, and so far as every citizen who wants to travel from the west side of the Los Angeles County to the east side of Los Angeles County, using Main Street, there is no elimination of the extremely hazardous grade crossing on Main Street whatsoever under the railroad plan. Under the railroad plan, there is no relief whatsoever from the use of Alhambra Avenue, where the railroad completely monopolizes the street. At Macy Street, under the railroad plan—and I shall qualify what I said about Main Street the same way, there is for this large body of citizens an increased hazard by the fact of the putting in of the railroad plan at Macy Street, for the reason that where this body of citizens traveling from the city here to their homes, or traveling out to the east part of the county, the most populous part of the county, now encounter only the trains of the Salt Lake on the east bank of the river, if the railroad plan were carried out they would encounter the same trains on the Salt Lake plus all the trains of the Southern Pacific on the surface, at a crossing which it is impossible to guard on account of the proximity of the buildings which come right up to the very narrow right of way

of the Salt Lake. At Aliso Street, where the most traffic accidents we have had occurred, the same situation prevails. In fact, that is characteristic of Main Street, Macy Street and Aliso Street. At First Street we must admit there would be a slight relief. Certain passenger trains would be taken off of Alameda Street and put under the east end of the existing First Street viaduct, but in that connection arises the situation on Alameda Street which, in my opinion, would not be very materially improved for this reason: I think the records of this Commission, the accident records, which I understand are in evidence here, will show that a large majority of the accidents are not due to street cars or pedestrians, or vehicular—people traveling in vehicles, being run into, or running into live passenger or freight trains. I think those records will clearly demonstrate that a great majority of the cases are where the use of a spur or track is occasional, and, consequently, the driver of a vehicle is not so much on his guard as he would be if he expected at a certain place to encounter a train. In that connection, I think the attention of the Commission should be called to the practice, and the Commission can verify this by having an expert go up and down Alameda Street almost any night—the practice of the railroads in leaving dead cars in the street, single cars, whole train of cars, without any lights displayed whatsoever. A place where they often, in this particular, almost nightly have them—and I know because we often drive by there—is just east of the Arcade Station grounds in Alameda Street. It is very seldom that there is not a whole train or pieces of trains, dead cars, in the street there, using the street as storage. Another place I have in mind is just north of First Street on Alameda

Street. They are delivering there to the Union Hardware and Metal Company.

Proceeding to Fourth Street, taking first the effect of the railroad plan on the 4th Street bridge, the 4th Street bridge is a very long bridge of antique construction—I don't mean it is so antique, but at the time it was put in it was out of date because it was old-fashioned wooden construction which has proven very expensive for the city. It is proposed, as I understand, by the railroad company, to raise the surface of that bridge just at the point where the east approach reaches the level of the bridge, a certain number of feet, some 5 feet or something of that kind. Now, I would direct the attention of the Commission to the fact that the approaches of that bridge are extremely dangerous to automobile traffic. They are both curved. A machine going up those curves already encounters, or is apt to encounter, other machines just leaving the level and coming down on to the approach. If the railroads should be permitted to put something in the nature of a hump in there, even if it was a very much smoothed-out hump, the present difficulty and the present likelihood of accident there due to the fact that you can not see some one coming approaching you around the curve, would be very much accentuated and increased by the fact that in addition to the curve you would also have a hump which would hide the approaching vehicle from being visible.

The traffic from the 4th Street bridge and the traffic going to the 4th Street bridge, when it gets on the west side, divides. The street car traffic goes via Molena, and what was formerly Stephenson Avenue and is now Traction Avenue, thence into 3rd Street and crosses Alameda

at 3rd. This traffic is subjected to the most unreasonable interference by the railroad companies. Referring for a moment to the larger map, I would like to point out to the Commission just why that is. The point of which I speak is here (indicating).

Mr. STEPHENS. That is Central Development Company's Exhibit 1.

A. Referring for the moment to Central Development Company's Exhibit 1 as being of larger scale and also showing the street car lines and, therefore, demonstrating the point: This is the 4th Street viaduct of which I have been speaking (indicating on map). This is Merrick Street, Oregon Avenue and 3rd Street. This line does not cross as shown here on this map, but actually curves into 3rd Street here (indicating). Now, it will be observed by the Board that all these sidings here (indicating), all point into 3rd Street. All the divisions of the track or sidings, or whatever you want to call them, to the south here point into 3rd Street. The result is that every time—and this is happening constantly during the business day—every time that a car is being shunted into this spur, or this spur, or this spur (indicating), the traffic is held up there. Every time that a train is pulled up in order to be shunted back into the Arcade Station, the traffic at 3rd Street is again blocked. Now, the reason I would particularly call your attention to Third Street is that it is a main artery that leads—I mean it carries the greatest part of the traffic that leads to the Santa Fe Station, and it is no uncommon occurrence to see vehicles lined up there at least a block on each side during the busy hours of the day and during the time when people are trying to reach their trains at the Santa Fe Station. That is a

particularly bad situation, and a particularly dangerous situation. A large part of the vehicle traffic from the Fourth Street bridge and to the Fourth Street bridge, very large part of it, greater part of it, doesn't follow the same route as the street car traffic, but follows a route leaving the bridge at Fourth Street in what was formerly Vincent Street and is now renamed Fourth Street, going across the Southern Pacific tracks here (indicating). Now, every vehicle that goes there, and there are a great number of them—we had them counted on one day and the results were rather interesting. Mr. Jerome Haldwell, of 2318 Fifth Street, was posted at Alameda and Fourth from 6 A. M. to 8 P. M. on July 21, 1917, to observe the through traffic, so far as that was concerned,—not the traffic which originated here (indicating) and went into Alameda Street, or here (indicating) and went into Alameda Street, but the through traffic. During that time he counted 3720 vehicles and 1235 pedestrians.

Now, I would particularly direct the attention of the Commission to the fact that, with the carrying out of the railroad plan, if we could admit that it was fine and everything else, there is absolutely no change to be made in the eight tracks which every one of these vehicles now has to cross in this public thoroughfare (indicating), and that, gentlemen, is the short way to the center of Boyle Heights, it is the way that the automobile traffic over there seeks and that a large part of it goes. I should say it compares favorably with the traffic on either Seventh Street, which, of course, is the greatest, or First Street. These eight tracks, I understand, under the railroad plan are to remain. In fact, they show here on their own plan, by

an extension of the purple border here across Fourth Street and clear up to Third, that they consider it essential that that be left a part of their yards—those public thoroughfares there. That very fact, incidentally demonstrates conclusively to my mind that the railroads admit that the Arcade station site is not big enough to handle their present traffic, let alone the traffic which they propose to add to it by taking the Salt Lake in there.

(Tr. 1064-1069.)

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Q. Did you refer to Sixth and Alameda, Mr. Workman?

A. I did not refer to Sixth and Alameda, because it is absolutely hopeless, and I never travel that way. Sixth and Alameda is the worst grade crossing in the city. Of course, what I said about Fourth and Alameda namely, about the railroad company claiming that it is necessary to include that in the yards is also true about Sixth and Alameda. They have drawn their purple line showing the yards clear across Sixth and Alameda, as they have across Fourth and Alameda.

Q. Mr. Workman, you are primarily interested in the elimination of the dangerous grade crossings?

A. I am interested in asking this Commission to give me and to give the 60,000 odd citizens who live on the east side of the river what is one of the fundamentals of a civilized community, namely, a safe way to and from my home. Everywhere the considerations of public health comes first, the considerations of public safety come next, and the conditions at the present time are absolutely unsafe.

Q. And you have no interest in any particular depot site, providing that site does not create impossible conditions so far as safe grade crossings are concerned?

A. None whatever. I have my views as to where I think a union terminal, if the Commission saw fit to order one, should be placed, but the particular appeal that I feel should be made on behalf of my fellow citizens over there is that whatever is done with the union terminal problem, the elimination of grade crossings, or the separation of grade crossings shall not be interfered with and not be delayed. I can see how, if it were determined to build a union terminal in a certain location and that were made the first condition of the procedure, due to the necessity for condemning property on which to put it and other similar proceedings the process might be held up for several years. As a matter of fact, the situation with us is one that is absolutely acute,—it is a matter of public safety.

(Tr. 1072-1073.)

Q. Are there any reason why it would be difficult for our company to enter into an arrangement and finance the ownership where there was a joint ownership of the facilities?

A. Yes, there would be. Our general mortgage permits us to issue bonds only on property to which we own the fee.

Q. To which you have the title?

A. Yes. If there was a station built at the Plaza, as proposed by Mr. Barnard or Mr. Hawgood, we of necessity could not own it all. It would either have to be owned jointly by the three companies or owned by an independent company, and we could not, under our mortgage, issue bonds to pay for our part of it. In

other words, in order to finance a project, under our mortgage, we have to own all of it.

Mr. HALSTED. For the information of the Commission, I will file a copy of our mortgage. I think the mortgage has been before the Commission but not in this proceeding.

Commissioner THELEN. We might as well have it in this proceeding. This document which is the first mortgage of the San Pedro, Los Angeles & Salt Lake Railroad Company to The Guarantee Trust Company of New York may be introduced and will be marked

EXHIBIT 23

of the Southern Pacific Company and Salt Lake.

Mr. HALSTED. * * * How is it proposed to meet that difficulty with respect to the proposed plan of the Salt Lake-Southern Pacific contract and arrangement for the use of the Arcade depot?

A. Well, the contract that we have executed between the Southern Pacific and the Salt Lake provides that each company shall finance the improvements on the properties it owns. For instance, all parts of this plan, if it is carried out, they will locate on the real estate of the Salt Lake Company whatever improvements are made by that company and they will be financed by our company. The parts located on the properties of the Southern Pacific will be financed by that company.

Q. Well, each company will own its own property?

A. Yes, own that and all the improvements made on its own property.

Q. And the other company will simply have operating rights over the property of the other?

A. Yes sir.

Q. That is, one company will have operating rights on the owned property of the other?

A. Yes sir.

Q. But the property will be owned by the company—

A. The ownership won't be changed. We will continue to own all that we own now, or whatever we have to buy on our side of the river. The Southern Pacific will continue to own whatever they have now or whatever they have to buy on the other side of the river, and there will be no common ownership of these properties to be used jointly by the two companies under the contract.

Q. Any new property is to be acquired, if there is any for carrying out the plan, one of the other of the two companies will acquire that property and construct the necessary facilities, is that it?

A. Yes, and the other company will have the joint use of whatever property is acquired in that arrangement.

* * * * * * *

Commissioner THELEN. Mr. Halsted's question is simply this: What has the attitude of your company been on the question of the separation of grade crossings?

* * * * * * *

A. Our company has always felt and publicly expressed in a number of different places and on a number of different occasions that we are not opposed to the separation of grades but regard that as something that should be carried out in this city as soon as it can practically be arranged.

* * * * * * *

The contract that our company and the Southern Pacific entered into we thought would be, if approved and carried out, an important first step in that elimination of grade crossings, because it would remove the freight and passenger trains from Alameda Street of the Southern Pacific. (Tr. 1086-1090.)

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A. * * * This contract was simply one between the two railroad companies. We realized that the separation of grades was not a thing that could be accomplished by us, by the two companies alone. We have believed, and I am voicing the sentiments of the Southern Pacific officers when I say this, that if this contract is approved and the project is permitted to be carried out, the grade crossings at Main Street, Aliso Street, Macy Street and 7th Street should be eliminated. How that should be done is something for the engineers of the Commission and the railroads to agree upon. I consider the separation of the grades at those four places an essential part of it. I do not consider the separation of the grades at Ninth Street essential at this time. Ninth Street is a relatively unimportant thoroughfare. This arrangement will not materially increase the railroad traffic over Ninth Street, and until there is more business on 9th Street than there is now, I think it would be an economic waste to separate the grades there; but at these four streets I think the separation of grades should be accomplished. I feel that the two railroads, the Santa Fe Railroad on the other side of the river should bear part of the expense, and I think the municipality should bear part of it, and possibly the county. But that is not a question for me to decide, and the reason that all allusion to separa-

tion of these grade crossings was left out of our contract between the Southern Pacific and Salt Lake was we felt it was a question which must be decided by a public authority as to how they should be separated, in the first place, and who should bear the expense in the second place, but we are in favor of a separation of grades at those four crossings and we have been, our engineers have done the best they could to work out a practical plan for the separation of grades at those points. Now, maybe some better plan can be evolved. We have studied the thing conscientiously and sincerely for a couple of years, and the plans we have presented are the best that we have been able to devise, but if some other plan is submitted, why, we will not be opposed to it but are heartily in favor of these four grade separations. With these separations referred to at these four crossings, it practically means that all the passenger trains of our two companies and almost all of the freight trains of the two companies will go in and out of the station without crossing the streets at grade. That is the feature of it that I consider not only most important, but almost essential.

The project of a union terminal passenger station I consider relatively unimportant, but the grade separation is something I think we should all work to and do our very best to accomplish within a reasonable time. (Tr. 1091-1092.)

Q. Now, I would like to ask you to discuss this matter of a union passenger station in the City of Los Angeles and give your views as to the necessities or advantages of such a station, having in view the kind of transportation that the railroads move in to the city, that is, as to whether it is through transportation

or through traffic or traffic which terminated in the city.

A. Well, as every one knows, the passenger traffic in and out of Los Angeles is on a very different—of a very different character than that in cities like Kansas City and St. Paul and Omaha. A very large majority, almost all of the people who come into Los Angeles from the east, they come here and want to stay here. They don't come here to go somewhere else; they come here because they want to visit or to spend some time in Los Angeles and the vicinity. The consequence is that there is very little direct interchange of business from one station to another in this town. For that reason, the necessity for a union station is not so great as it is in a city where there is a larger volume of thru business. As you all know, the railroads in Kansas City recently spent a very large sum of money to build a union station, because the old one had become inadequate, but the movement of people thru Kansas City is enormous every day. There is very little such movement here. And that contract that was made between the Southern Pacific and the Salt Lake for the joint use by both companies of the Arcade station did not emanate at all from that desire or belief on the part of the officers of either company that the general use of such a station was, in itself, a desirable feature, but simply it was one thing the Southern Pacific had to offer, in view of our inability to build a station of our own on the east side of the river, and that was in return for what we had to offer them, an opportunity to get their trains off of Alameda Street. And the fact that the two companies occupy the same station we don't regard as of very much value, either to the railroads or to the

public. I don't think this is a city where a union station would be very much of a convenience to the traveling public and, as far as the inhibitants, the business men of the city, are concerned, it is a little bit of advantage to them to have people have to stop and pay some toll for the privilege of passing thru this town.

* * * * * * *

I really don't think that, aside from the sentimental part of it, the union station is of much value to the people in this city, or to people going out of it. (Tr. 1097, 1098.)

(H. C. NUTT:)

Q. * * * In the consideration of the grade crossing elimination, have not stated that you consider it as connected up with the location of a union terminal?

A. I have never said so, and I don't think the location of a union terminal has the slightest thing to do with the other question.

Q. You don't think it has?

A. No sir. If you put a union station at the Plaza, those streets crossing our tracks and the Santa Fe tracks on the river bank ought to be separated, just the same as they ought to be separated if we stay where we are, the same as they ought to be separated if we go into the Arcade station. The two questions are entirely distinct and separate, as night and day. (Tr. 1128.)

JULIUS JANSSEN,

a witness called in behalf of the Central Development Association, being duly sworn, testified as follows:

Direct Examination.

Mr. SIMONS. Q. What is your business, Mr. Janssen?

A. Superintendent of mails, Los Angeles post office.

Q. How long have you been in that position?

A. In the neighborhood of about seven years.

Q. And you have charge of the handling—of receiving and distributing mails and sending it on various carriers of the city?

A. Yes, through the postoffice.

Q. Through the post office?

A. Yes, sir.

Q. What is the advantage, if any, to the postal facilities in the Union Terminal where the trains of all roads concentrate?

A. It is the policy of the postoffice department all over the country to move their mailing section, that is, the section that prepares the mail for outward dispatch, at union depots. It means the saving of time that is taken in hauling mails to and from the depot and the post office, and the several stations that might be included, like, for example, in Los Angeles, we dispatch from the Arcade station, which is about a block from the Arcade depot, and station 'C', which is at 522 South Los Angeles. That would all be overcome at a union depot similar to the one they have in San Francisco and similar to the one they have at Kansas City, both of which I have been in. Also the one at St. Louis.

Q. Is the element of time between the distributing stations in the receipt of mails an important one?

A. A very great factor.

Q. Is it important that the union terminal station be approximately near the central post office?

A. Very advantageous, yes, sir.
(Tr. 1131-1132.)

R. A. Rowan,

a witness called on behalf of Business Men's Association, being first duly sworn, testified as follows:

Direct Examination.

Mr. Goudge. Mr. Rowan, do you reside in Los Angeles?

A. Yes sir.

Q. How long have you lived in this city?

A. 41 years.

Q. And what is your business?

A. Real estate. (Tr. 1137.)

* * * * * * *

Q. Would you care to indicate how much in value of property you have sold in the last 5 years, approximately?

A. Well, if you go back 10 years, or 7 or 8 years—the last 5 years have been pretty slim pickings. I don't know, but there has been a great many million dollars worth of property that we have sold, probably $50,000,000 worth, and may be $100,000,000 worth.

Q. In Los Angeles?

A. Yes, sir. (Tr. 1138.)

* * * * * * *

Mr. Goudge. Mr. Rowan, as a property owner, as a person acquainted with real estate values and conditions, and as one engaged in the hotel business in the respect and to the extent that you have testified, I will ask you to state what, in your opinion, in the interest

and for the convenience and safety of this community, the business community of the City of Los Angeles, is the most important matter under submission to the Railroad Commission at this hearing, at this time, relatively, referring to the matters of grade crossings, location of passenger terminal stations, interchange facilities and the establishment of a union passenger depot?

A. I think to eliminate grade crossings, and to establish once and for all that the Arcade station will be a permanent station for the Southern Pacific and the Salt Lake Railroad, and to do it as quickly as possible.

* * * * * * *

A. In my opinion, the present Arcade site is nearly ideal, as nearly ideal as we could hope to have, and, in my opinion, the plaza site would be almost the worst location we could possibly select.

* * * * * * *

A. In the first place, the plaza is a section of our city that is dead and buried and has been for a great many years. The slums of Los Angeles are located there. Nobody wants to go there, everybody avoids it and goes around it as much as they possibly can. You would not want your wife or your children or anybody else to go around the plaza or to get near it, and, on account of the hills, it is located right up in the narrow stretch there and that is the reason that the business section has moved away from there, and there is no power in the world that can keep it there, and no private enterprise will go in there, no private capital will go in there, nobody will build an apartment house or engage in any mercantile business or anything of that sort because it would be doomed from the start. You

cannot interest private capital in that part of the city, and the drift and the trend of the whole City of Los Angeles is south and east and west and away from the plaza, and in going out to Pasadena, for instance, or going to the mountains, you don't like to go by way of the plaza. It is inconvenient and you turn at First and 2nd and 3rd and up onto the Broadway part and then go through the tunnel and skirt around it, or you go up Franklin Street and turn onto New High Street, and then you go through the tunnel. (Tr. 1146-1148.)

Q. Speaking of the hotel men, the advantage of the two locations that you have mentioned, that is, the neighborhood of the Arcade depot and the neighborhood of the plaza, which, in your opinion, is the more accessible and convenient?

A. The Arcade site is very much more conveniently located. In fact, it is ideally located. We allow 5 or 6 minutes to people that travel, people leaving the hotel, for instance, to get to the Arcade station of the Southern Pacific, allowing themselves 5 or 6 or 7 minutes even to get down there, and no one hardly thinks of taking over 10 or 12 or 15 minutes at the most, and that gives them all sorts of time. Many times trains have been caught in 5 or 4 minutes from the Alexandria Hotel. You can go down Sixth Street, and as soon as you cross Main Street, why, you have a straight shoot right down to the station. You can go down Fourth, go down Fifth, Second, First or Sixth, Seventh, Eighth or Ninth Streets, you can get to the depot in a dozen directions. The blocks are short, and after you get past Main Street or Los Angeles Street, you can shoot

right into the Arcade station without any interference from the traffic. It is very conveniently located.

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A. * * * From the center of Fifth and Spring, the Alexandria Hotel is 4980 feet, approximately, to the plaza, following the streets, and from the same point, it is 3670 feet to the Arcade, a difference of over 1300 feet or a quarter of a mile. But there is a great deal more than that quarter of a mile. After you leave Spring and cross Main and you cross Los Angeles Street, you have a straight shoot down to the Arcade. These other little streets that come in there don't affect you at all. You can go right straight through, you can shoot down there, while, if you start for the plaza, you will be stopped all the way along and you have a choice of any number of ways to get down to the Arcade, while there is hardly any choice at all going up there.

Q. Leaving now the question of the location of the passenger stations, and the most convenient and accessible points for a station, will you state what, in your opinion, is or would be the value to the community of Los Angeles, the business and property owners of Los Angeles, to be derived or accrue from the establishment of one Union passenger station in the City of Los Angeles, aside from the question of location now, the advantages to accrue, if any, to the City of Los Angeles, its business men and property owners, from the establishment of such a union passenger station?

A. I think it would be very much to the disadvantage of Los Angeles.

Q. For what reason?

A. For a number of reasons. In the first place, this is a terminal, not a great transfer point, but if it were, I would reason the same way. We have people come out here and we would like to have them get off the train and get into a taxi cab, or get onto a street car and go up to a hotel or an apartment or into some private home, would like to have them get acquainted with Los Angeles and stay here a little while, for then there is a good chance of having them return and eventually live here, rather than have them go right through, and, of course, the longer they stay the more money they spend with our merchants, and that helps Los Angeles just that much. And I think another reason why—I would like to say that we would like a station, one station at the Arcade site, or another one somewhere else, because it builds up and makes a little value of real estate here and another there, gives more people a chance, helps a greater number of people rather than concentrating it at any one point, and if there is anything in the world that Los Angeles is up against, it is congestion. Our streets are narrow, our blocks the longest probably of any city in the world. It is terrible, the congestion that arises from our situation. On account of the hills, we have to go down almost a canal, a little channel through town here, and then it finally spreads out, and with these long streets and going down just a few of them, and the scattered cross streets, one street where there should be two, we are congested terribly and it is an awful problem, and to put a union station up here and have every line go there and all the taxicabs and all the street cars go there, it would be something that would put us right up against it. If our streets were twice as wide

and the blocks half as long and we didn't have these streets as they are, it would not be so bad. But in any event, I think it is better to have two or three stations. It helps a great mass of people and spreads the benefits around and gives more people a chance, instead of concentrating in a union station. (Tr. 1149-1153.)

Mr. DURBROW. If the Commission pleases, we would like to file with the Commission a formal application for the approval of the contract which has been executed by the Salt Lake and Southern Pacific Companies, and I suggest that this application be given an independent and separate number, but that this application be consolidated with this proceeding and that the Commission enter an order which will permit the evidence which is introduced in these proceedings now before you to be used or availed of in support of our application.

Commissioner THELEN. There being no objection, that will be the order, so that appropriate number will be given this petition, it will be consolidated for hearing and decision with these other proceedings. Now, Mr. Shoup, will you take the stand, please. (Tr. 1170.)

PAUL SHOUP,

a witness called in behalf of Pacific Electric Railway Company, being first duly sworn, testified as follows:

Direct Examination.

Mr. KARR. Mr. Shoup, you are in charge of the Pacific Electric Railway Company's property in this vicinity?

A. I am.

Q. You are president of that company?

A. I am.

Q. You have been in charge of it for some years?

A. Yes sir.

Q. You are familiar, I take it, in a general way with the traffic situation in Los Angeles, and particularly are familiar with the traffic conditions confronting the Pacific Electric Railway Company?

A. Yes.

Q. The Pacific Electric Railway Company, I take it, is interested in the project that has been here presented by the Salt Lake and Southern Pacific Railroad Companies?

A. We are.

Q. Just state, Mr. Shoup, in your own way what the interest of the Pacific Electric Railway Company is with reference to that project.

A. When I came here in 1910, the fall of 1910, the entrance to the Pacific Electric station at 6th and Main Streets was on Main Street, as at present, and all the cars from the northern division, that is, the territory northeast and east of Los Angeles, was over Main Street. At that time too we operated freight trains at night over Main Street. There was a very considerable congestion of traffic on Main Street, and that congestion was up for discussion from that time on. As a matter of fact, it had been up for discussion before I came here, and the Pacific Electric Railway Company I found had, anticipating this condition of being unable permanently to continue satisfactory operations on the street, purchased a private right of way in considerable part from Los Angeles Street through down toward Alameda Street (indicating), with

no purchases, however, beyond Alameda Street. And on behalf of the company from time to time I made purchases looking toward the completion of that right of way, this being a number of years ago, and the right of way now as owned by the Pacific Electric is very nearly complete. We have two or three pieces of property yet to purchase, taking us down as far as Central Avenue (indicating). The object of that was to find a route for an elevated road from this terminal at 6th and Main that would accommodate our traffic primarily—no, to accommodate our traffic for both the southern and northern divisions, that is, the traffic that comes in over Main Street, or was coming in over Main Street at that time, and also the traffic that comes up 7th Street and into the station from around through the Main Street entrance or along San Pedro Street and up over the elevated at the rear of the station. The Main Street situation was the more pressing so far as needing a solution. We made arrangements with the Southern Pacific whereby they hauled our freight through town and relieved the situation as to freight trains on Main Street, and after very considerable negotiations we finally made arrangements with the city for temporary relief by building an elevated coming down to grade at San Pedro Street and then over a municipally owned line, which we leased, coming out over San Pedro Street to a connection with our northern division lines, Pasadena and east. At that time I stated to the council, and it was generally understood, this would not be a permanent arrangement but that we would expect, whenever were justified, and conditions warranted, in going further with an elevated road, as I expressed it, across the river and then out

to a connection, eliminating grades and facilitating our operations. And our limit, including any rights on Los Angeles Street, as I recollect it, was 9 years.

The situation was materially relieved by this operation, but even now we are being somewhat hampered on San Pedro Street by the increased traffic there, and we have not at any time lost sight of the need of getting our interurban trains, or the larger part of our interurban trains, off of the streets. When this Salt Lake-Southern Pacific—might I go back a little further and say that the Salt Lake-Southern Pacific project is not new, so far as the discussion is concerned. You will find reference made to it in Mr. Arnold's report, where he suggests that the Salt Lake and the Southern Pacific could occupy this Southern Pacific station providing a new station were built at that place, and also made reference to our project of running the railway, elevated road, by that station which would give our interurban passengers access thereto. When this Salt Lake-Southern Pacific question of interchange of facilities and common use of the Southern Pacific station came to a point of detail and discussion and agreement which has been, I think, approximately two years ago, as I now recall it—this discussion looking toward a definite agreement within a limited time, I know that a year ago last April a definite memorandum was signed in relation to the matter. At that time we discussed how this could be used to help out the Pacific Electric which, in turn, is helping out the traffic of the steam lines—that this elevated road going down here (indicating) and passing this Southern Pacific station, and this was to be continued and under the plans is to be continued as an elevated, crossing Seventh Street

overhead and coming down to grade here (indicating) striking Pacific Electric's private right of way and using the private right of way to Long Beach and territory south, and then coming across through this territory here (indicating) and coming along on the Salt Lake's right of way to Aliso and Anderson Streets, and going on east, to bring all of the Pacific Electric interurban passengers to the station and make it very convenient for them to and from the steam line station of the Southern Pacific and Salt Lake.

We are at this time handling all the Southern Pacific's Long Beach passenger traffic with it and all of its Pasadena traffic also. We were able to make a satisfactory arrangement, as shown by this agreement which has been just filed, whereby we could, without any investment on our part, secure a right of way along this entire distance here (indicating) to a connection with our private right of way at Aliso Street, the bridge. And our right of way expense would be limited to this almost complete right of way on this side of Alameda Street (indicating), the Southern Pacific and the Salt Lake providing the right of way for the rest of the direction. We asked our engineers to make figures on just what the cost would be to us and also as to just what we would be able to accomplish, we going into the matter with our transportation officials, of course, as well as engineers, to see whether or not we would be justified in undertaking such expense. And after they made their figures, I came to the conclusion that it was a matter of whether or not we would be able to finance the project in view of our present earnings, and the two reasons governing were, first, the elimination of grade crossings, and that came

home particularly after the accident at Aliso Street with which the Commission is familiar, and the other, that we would be able to give a very considerably better service. In concluding that this route was satisfactory, we had in mind that this elevated road (indicating) would serve both the territory to the west and south, that is Redondo, Los Angeles Harbor, Long Beach, Santa Ana, Whittier and sections down there, as well as the territory off to the north and east, Pasadena and out as far as San Bernardino, Riverside and Pomona and so on, while, under the plan that had been discussed or considered it did not give that double use. As a matter of fact, we did not find any other plan which was practicable at all. Mr. Arnold's report—and I made an independent check at the same time—showed this Pacific Electric station at 6th and Main was about at the center of the population of the City of Los Angeles, both as to the city proper and what he termed the greater urban area, which included the suburban communities. My own check on that indicated about a block farther south than Mr. Arnold's check. So that appeared to be about the central location, that is, the central location with reference to the business district of the city, and my own judgment, which is based on observation and upon the discussions with the people whom I think know a good deal about it, is that 7th Street is the principal cross street of the city and would tend to make a dam at the point of intersection at Broadway, Spring and Main, and that 7th and Broadway will be the business center of Los Angeles for a good many years to come, and that is very conveniently located to this station (indicating). As to the expense, which was figured out at $1,200,000,

I think now it will cost probably a little bit more than that. In saying that,—why, the Pacific Electric is willing to bear its portion of the grade separation costs incident to viaducts that may be assessed upon us in connection with this plan, and I do not know what those figures will be because that is one expense where I think the public ought to share, though the rest of the expense will be borne by the Pacific Electric, so far as it is concerned, or its interests are concerned.

In going into this subject, we, of course, had an analysis made of the results and we came to the conclusion, speaking for my associate officers and myself, engineers and operating men, that it was entirely practicable and would give satisfactory operating results, and as I stated to a committee from Pasadena fully a year ago, eliminating the question of speed,—I believed we would be able to run trains from 6th and Main Streets to Colorado Street, Pasadena, in 25 minutes if they could carry out certain suggestions that would help the running time in South Pasadena and Pasadena, which I think entirely feasible, and I will not go into that unless the Commission desires it, because it is purely a local question pertaining to just one branch of the line. Our transportation department reported that to Echandia Junction, not shown on this map, some distance east hereof (indicating), and 3.2 miles by this route from the Pacific Electric station, we would, compared with the Main Street line, save between 8 and 9 minutes, and I think I would be very safe in saying that we would certainly save between 6 and 7 minutes, and I asked them, in making the plans, that they must determine the practicability of making a saving that would give us a better service, there being

some complaint from Pasadena, as well as the regular service and as well as saving these grade crossings, and a plan was made with them with that in view and the line will be practicable for that operation for at least 30 miles per hour between the Pacific Electric station and Echandia Junction, allowing for two stops, and we don't expect to carry, of course, a street car service on that line. We expect—the plan calls for making the run, going along the Salt Lake right of way—and we are next to the river bed under this plan (indicating), and then we rise and go over the Salt Lake tracks and come down into a connection with our own line (indicating), and those are two additional tracks that are to be carried on to Echandia Junction (indicating)—really carried on to Covina Junction by the location of the yard beyond Echandia Junction, so that the express tracks that carry this traffic out of our Sixth Street Station would be practically free from interruption all the way from the station to Covina Junction. I don't know of any necessity for any stops in there except at the Southern Pacific station, and as interruptions might occur it would be inconsequential in connection with the junction of the Long Beach and the northern division lines near the Southern Pacific station, and possibly we might find it desirable to put in a connection at Echandia Junction between these express tracks and the present tracks, depending on how we work out the service through the city over the present tracks. That gives the Pacific Electric an elevated road, without a single grade crossing of any kind, with either highways or with other roads, from this station out to Covina Junction. And the city has cooperated with us in removing some of the

crossing hazards at Rose Hill which will further help our service and conserve safety towards east. We get away from our difficulties of crossings at Alameda Street, Santa Fe crossings and the Salt Lake crossings, some 16 line crossings in there all told, the Salt Lake, the Santa Fe freight track, the Santa Fe main line, the Southern Pacific's main line and two spur tracks of the Southern Pacific. Now, we have not found any other plan that would be practicable, and as I have said, we haven't found anything else that would answer our need. The question of making a terminal at the north end of the city is impracticable. We have the major part of our business which comes down to the center of the city, and while we would be very glad to show just what it is, I can say now that at least 80 per cent of the traffic from the northern division gets off either at Second Street or below, and if it came to a question of serving these people up in here (indicating), over 90 per cent of the traffic is within two or three hundred feet of our station (indicating), and my judgment would be to run some cars down through this station (indicating) up to Main Street rather than to attempt to run them over the main line crossings or to maintain that service up there (indicating). But if I am wrong about that, it is a very easy matter to send some cars, whatever is justified by the business, in over the present route. I asked our engineers in connection with that situation here (indicating)——

Mr. KARR. By "here" just designate where you mean.

A. This situation here (indicating) at Aliso Street and Macy Street, whether they could work out any satisfactory plan which would eliminate the grade

crossings by elevating our road and, so far, nothing has come of that plan that would not involve entirely too much expense for the result that the Pacific Electric would secure. It is just out of the question for us to attempt to throw that service back on to Main Street, all of our suburban service. We would not do it from our own point of view, and the City of Los Angeles would not permit us to do it if we wanted to. They were very anxious we should get part of our traffic off of Main Street, and the larger part is off Main Street at this time. So that any terminal at the north end would not work into our use, would not help us a bit. I mention that because the suggestion has been made that in some way a north end union passenger station might be utilized to the benefit of the Pacific Electric, and I don't see how it could be. It would separate our stations into two, and we would either have to run our cars on down here (indicating) to where the passengers want to go, or we would have to transfer every day these thousands of people and get them down on street cars. Of course, there is quite an interchange of business because we handle a great many thousand people a day on the different divisions, who would also be discommoded. And so far as this situation is concerned (indicating), it can be worked out.

Q. That is, the Aliso Street situation?

A. At Aliso and Macy Street, if it can be worked out so that we can separate those grades there for the service they demanded on this line, such as the service up Garvanza Way, South Pasadena, and probably a street car service into Sierra Vista, so that we would be very glad to consider any plan to do that, believ-

ing, however, that these two bridges here (indicating) ought in some way to be consolidated into one.

Q. That is, Macy and Aliso?

A. Macy and Aliso, but our engineers tell me we would have great difficulty in—owing to the topography of the country here (indicating), in getting from this track (indicating) over any bridge here at Macy (indicating). We are in the Arroyo here, down in the gulch (indicating), and this is high land in between here (indicating), and Mr. Johnson has thrown up his hands and says he does not find any way of doing that; but the engineers are working with that problem and if they find anything that is satisfactory * * * because, so far as we are concerned, it is very desirable that we get rid of our grade crossings, especially the steam lines, and we have a great many accidents on the streets of Los Angeles that we would like to get rid of also. I remember the other day having occasion to look up the number of accidents in December and January, December, 1915, I think it was, and January, 1916,—two months, anyway—and in the City of Los Angeles we had 240, over 240 accidents, that is, accidents as classified by the Commission, the kind that we report as accidents,—interferences with vehicles and so on, and there were 220 of these on the streets and all the others were at grade crossings, and none on private rights of way, though over half of our track in Los Angeles City is on private right of way.

I think that that is all that I have to suggest. Any other plan that has been brought before me for consideration would involve an impossible expense. Suggestion is made that we might build an elevated down Los Angeles Street, but under the city charter they

can not do that and we would be up against duplication of expense, and, so far as the subway on Main Street is concerned, that is something that is reserved to the city; but even if it was built on Main Street, no doubt it would be used for local cars as well as the interurban cars, and would be very, very expensive, any plan of that kind, that would serve both our station and the northern and southern divisions, compared with the plan that we have had up for consideration for these many years past.

So far as the passenger station with the Southern Pacific and Salt Lake at this point is concerned (indicating), why, that would suit us very well, because, as already pointed out, all of our passengers from the southern and the northern divisions go right by the station, and, so far as the Hollywood and Edendale and Glendale sections are concerned, we have a car line down Sixth Street, which comes right to that station at this time and passengers can come down from Hollywood and transfer at Lakeshore and get to the Southern Pacific station for a 5 cent fare, I think in a very reasonable time, and the Edendale cars run direct from that section to this location in the north end of the city. This line also runs up to the Los Angeles—to the Pacific Electric station up town, and connection is made there with the Glendale line. In fact, it is only the western division that would not have a direct route, and, so far as the passengers coming in from that section by the western division,—I mean Venice, Santa Monica and the territory in there—why, they would come in over the old air line of the Southern Pacific, which is electrified, and from which we give passenger service by making transfer at Culver City.

This map is not large enough to show that situation. But that really makes it possible for anyone desiring to do so to come right to this station with their baggage from almost any part of the Pacific Electric system.

Some reference was made to the nature of this construction (indicating). We expect to build a line just about like this (indicating) on through down to a point of connection with the elevated, with the steam line elevated (indicating), this steel frame construction with the ballasting and concrete deck, and beyond that I presume there will be some kind of construction that the steam lines have, that is, wooden construction with steel wherever it is necessary over the streets. The maximum curvature, speaking of running time, the maximum curvature between this intersection at Aliso Street is 10 degrees, between that point and the Pacific Electric station. At this point (indicating) near Aliso Street the plans at first contemplated a 20 degree curvature, but I think that can be reduced. Our engineers reported that the line which had the 20 degrees was good for a speed of 20 miles per hour, and the maximum grade on one side is about 2½ per cent and on the other side, at this same point, Aliso, is 3.4 per cent, and I think they can reduce that curvature so that we can get down there easily 30 miles per hour, but even if we have 20 miles we can maintain such speed as to make this reduction in time that I have referred to.

Q. Now then, one further thing, Mr. Shoup, if you please. You consider it of extreme importance to the Pacific Electric to be permitted to avail itself of the right of way for that elevated structure which it is

supposed to be furnished, or offered to you by the Salt Lake and Southern Pacific?

A. I think it is of very great importance.

Q. Otherwise you think the project would probably be so expensive that you could not presently afford it?

A. I don't know how we could work it out under the present conditions. (Tr. 1171-1185.)

* * * * * * *

SAMUEL STORROW,

recalled.

Direct Examination.

(Map placed upon the wall and witness explains same.)

The WITNESS. This design is predicated on the idea that the question before us is fully as much the elimination of grade crossings as it is the building of a union terminal, predicated on the idea, stated in the joint engineers' report, that the elimination of grade crossings carries with it as corollary the building of a union terminal. Looking at it from the grade crossing elimination standpoint rather than from the terminal standpoint, and yet it is the development of the idea of a terminal on the plaza. (Tr. 1348.)

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GEORGE B. HARRINGTON,

recalled.

Direct Examination.

(Tr. 1357.)

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We have carefully figured the probable salvage in case it was necessary to abandon the Arcade site and

the attendant buildings, with its coach yard. We figure that we would get in rail and buildings and actual salvage at the depot, probably $37,000, and that the salvage at the coach yard would not amount to over $39,000. The total loss from these would make somewhere in the neighborhood of what is actually on our books at the present time, of $776,000 in improvements. This property on which the Arcade depot site is located, there is a very serious question of what would become of that property in case it was abandoned.

Q. That is, abandoned for general depot site?

A. Abandoned for general depot site, yes. The probability is that after it was exhausted it would go back to the heirs.

Q. The heirs of the Wolfskill Estate?

A. Heirs of the original renters. There is a piece of property worth $4,000,000, as nearly as we could figure it, and with this and the other loss, it would be altogether $4,852,000. (Tr. 1358.)

On the basis of the figures I have made, about $2,800,000 would be required by the company to come into this new organization. This with a loss of $5,500,000 mentioned a few minutes ago, would bring the whole transaction up to amount to about $8,000,000 to the Southern Pacific Company. Then there is the Macy Street property which would have to be replaced. We would have to maintain service in that territory somewhere,—industries have grown up all around it, and of that equivalent amount, say $562,000 of the value of the old property, that would be as compared with the proposed expenditure, the loss of value, the Southern Pacific share of the new proposition as pro-

posed, $1,800,000, the company would be out of pocket $5,867,000 by these losses. The new money required to float the terminal company with its coach yards and facilities, as I have outlined them, would amount to about $7,000,000. We would have a loss to the company of about $5,800,000. (Tr. 1362.)

The proposition with the terminal which Mr. Hawgood has proposed still leaves to the Pacific Electric a matter of getting out of town, with their big business, from the rear of the station. It would only be fair to assume we would still have to put up the $1,200,000 for the Pacific Electric to get out of their station, in order to take care of the north branches as proposed by Mr. Shoup and previously brought before the Commission. (1371.)

The main idea of this testimony, gentlemen, is to bring before you in a general way the fact that there are some very large economic losses to be considered to the carriers in making a new station site, particularly involved in the underlying titles and in the service which is now rendered by the existing facilities which would have to be replaced, and while these figures are subject to considerable variation on account of difference of condition that might be assumed in different ways, we desire to bring before you the fact that there is a very considerable economic loss to the Southern Pacific Company in particular in undertaking to abandon its present facilities, which we feel are sufficient to take care of the business here, and start out on a new proposition entirely. (1372.)

RICHARD SACHSE,

a witness called on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination.

Commissioner EDGERTON. Mr. Sachse, you are chief engineer of the Railroad Commission?

A. Yes, sir.

Q. And as such you were instructed by the Commission to make an investigation into engineering and other features of the matters involved in the various cases and the application which we have before us?

A. Yes, sir.

Q. You have made such an investigation?

A. I have.

Q. As a result of that investigation have you prepared a report?

A. Yes, sir.

Q. That is in writing and has been printed?

A. A portion of it has been printed. A good deal of the underlying data it was impossible to print, but it is available.

Q. And copies of that report have already been given to the various parties?

A. Yes, sir.

Q. Now, Mr. Sachse, will you briefly describe to us the scope of the investigation which you made, the time involved in making it and generally the matters covered?

A. We started making this investigation in December, 1917, under the instructions of the Commission. We

have been at it practically ever since,—that is, the report was completed on July 31st of last year and it has been in the printer's hands since then. I believe that the report itself is fairly complete. Generally speaking, it deals with three main subjects, that is, with the grade crossing elimination, with the freight facilities and with the union passenger terminal. There are also certain related subjects discussed to the extent that we thought it was necessary, that is, the electric interurban service and generally all the matters that were before the Commission in the cases and application that the Commissioner just referred to, and certain other cases and applications and informal complaints that you did not mention, Mr. Commissioner, but they are also given in numbers and references are given in the report.

I might say that the general approach to the three subjects that we took was this: we had before us a number of propositions and plans submitted to the Commission by various parties, and also other reports on the subjects that had been made in the past, and we studied them all and finally reached certain conclusions from the facts as we saw them, and these conclusions led to certain recommendations which are contained in this report.

Generally speaking this, I believe, is correct: That the grade crossing elimination is the most important subject and the recommendations we make for that branch of the investigation are to quite a degree independent of the other subjects and that means that all the other

matters more or less depend on the grade crossing problem and the solution of it.

The union passenger terminal in some respects is the least important of the three main subjects, that is, both from the point of view of importance to the city and also from the relative importance of these items that I have mentioned.

* * * * * * *

In my letter of transmittal which precedes this report I have given in as short a space as possible, I thought, the principal recommendations, and if the Commission desires I couldn't do much better than to read that, or summarize it.

Commissioner EDGERTON. Summarize it, if you will, Mr. Sachse.

A. We believe that all grade crossings, all important grade crossings on the river bank, the bank of the Los Angeles River should be eliminated by depression of the tracks and elevation of the streets, and that this program should be carried out depending to an extent on what is done with the freight and the passenger situation in the way substantially as is explained in greater detail in the report. We believe that the situation on Alameda Street is very bad and should be remedied by diverting all main line traffic to other channels, depending again on what is done with the freight and the passenger, and that in any event, regardless of what is done with these other matters Alameda Street should be used for switching, so it is only used in certain hours of the night. So that if these recommendations are carried out

97 per cent of the all the traffic now going on in Alameda Street will be taken off of that street.

* * * * * * *

On the union passenger terminal, which is second on the list, we believe there are only three feasible sites that can seriously be considered, and these are the Southern Pacific site, the present Arcade depot site, the Santa Fe site, and the Plaza site. I have stated in the report that the question of whether there should be a union passenger terminal is not finally, strictly, or even mainly an engineering question. It is a question of general city planning policy from the standpoint of the City of Los Angeles. And probably those factors will finally control, or ought to control.

Commissioner EDGERTON. Well, let me see if I understand. The question as to whether or not there should be a union passenger terminal at all you think is not strictly an engineering question?

A. Not strictly.

Q. But if it were determined that there should be a union terminal then the method of its establishment, the place of its location, all of the matters that involve operation, immediately becomes an engineering problem?

A. I should think so, yes.

Q. You say you think so. Is there any question about it?

A. Well, there isn't any in my mind. I know, however, that, as a matter of fact, those things in all cases in other towns have a great many other considerations, of course, to do with the location, aside from mere engineering considerations.

Q. This is what I have in mind. You have discussed, haven't you, in your report, the engineering problems involved in the location of a union terminal?

A. I have. Now, the question of whether there ought to be a union passenger terminal in Los Angeles, regardless of location, I believe, from our standpoint, should be answered with a very decided 'yes'. And I say that we come to that conclusion for the reason that in Los Angeles the conditions are practically ideal, the physical conditions, and the railroad situation at this time is such that if there ever is a union depot to be built this is probably the time to do it, because the facilities, the existing facilities are inadequate and all of the existing facilities are inadequate, and a great deal of money has to be expended in the near future regardless of whether there is a union depot, and regardless if there is one or where it is going to be built.

(Tr. 1478-1483.)

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A. * * * To further answer your question as to how we treated the various plans, we make complete estimates for all three plans, as far as the union terminal is concerned, and also tied in these other recommendations with that terminal, so we have comparative estimates as nearly as they can be gotten, for all three plans. My conclusion—I might say, our conclusion, and when I say "our conclusion", I mean the conclusion of the engineers,—is that the Plaza site is so greatly superior to the others, that the margin is so great that there is a distinct preference for the Plaza location,

and that if a union terminal is built at all it should be built there.

(Tr. 1483-1484.)

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Commissioner EDGERTON. Now, have you embodied in your report all of the plans which have been presented?

A. Yes.

Commissioner EDGERTON. You have discussed those plans?

A. I say "all". There have been certain plans suggested to us during the course of this investigation that we haven't dealt with in detail, and perhaps one or two we haven't dealt with at all, for the reason that we simply do not believe they are feasible plans. I have in mind such matters as involve cutting wide streets through the center of town, perhaps, and going into matters that are really outside entirely of the scope of this report. But the reports that were introduced at the previous hearings, they have all been incorporated in the report, and we have either used them as they were introduced, or we have what we thought improved them, made each report as perfect as we could, each plan.

The Southern Pacific plan, so-called, for instance, we have modified to some extent. We thought that would bring it more nearly in line to get the comparative basis of estimates and take care of these other matters, the grade crossing elimination and freight situation. So that we have complete estimates, I believe, for every feasible plan.

Commissioner EDGERTON. Let me see, then. You take, for instance, a given plan that is presented. You discussed that plan as presented. You then discussed other plans. You finally contrasted the original plan and proposed improvements with the plan you suggest?

A. Yes. And we not only contrast them with the plan we recommend, but we contrast them with each other. In other words, we have arranged it so that any comparisons can be made between any plans or portions of plans.

(Tr. 1484-1485.)

* * * * * * *

These recommendations are the principal ones dealing with these three subjects. As I said a little while ago we had to deal with certain other matters which I have listed under the heading "Related Recommendations". The main item is the electric interurban service.

We believe that if a union depot is built at the Plaza that there should be constructed within 5 years a subway from the Pacific Electric Sixth Street station along Main Street northerly under the passenger station, changing to an elevated railroad along Ramirez Street and meeting the present P. E. line at Aliso Street bridge. Then this line should continue as an elevated railway to Portland Avenue and then the present grades would have to be met. We also believe that the present elevated Pacific Electric structure in the rear of Main Street station should be extended to Alameda Street and further south to 14th Street.

(Tr. 1486, 1487.)

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Commissioner EDGERTON. Mr. Sachse, of course, as is well known, subsequent to the initiation of the investigation which has resulted in this report, that is, subsequent to the actual commencement of the work by the engineers under your direction, which resulted in making this report, Federal control of the railroad operation intervened?

A. That is true.

Commissioner EDGERTON. And continued up to the present time. Now, during the period of Federal control has there been any substantial change in the matters involved in your report brought about by the Federal Administration?

A. There has been no change.

Commissioner EDGERTON. None at all?

A. Well, there have been some operating changes, but there have been no substantial physical changes in the railroad facilities. There has been, of course, a very great change in the condition of the city, I might say. The growth of the city has gone right ahead more than normally.

Commissioner EDGERTON. In other words, your report discusses the matter as dealing with a present condition?

A. That is true. I might say that the acuteness of the situation in 1916 and 1917 that led to the inception of these proceedings and later on led to the decision of the Supreme Court ordering the Commission to go ahead, has been accentuated in the last three or four years, and that situation to-day is more urgent and more acute by a great deal than it was then.

Commissioner EDGERTON. Have you an opinion, Mr. Sachse, as to the result of taking no substantial steps to change the existing conditions?

A. Yes, I have quite a decided opinion. I do not think it is at all possible to continue as at present with all three of these matters, or of four or five of these matters that I have discussed. In other words, I believe that either jointly or individually, the railroads will have to make very large expenditures in Los Angeles in the near future, and, of course, I believe it is far better, especially from the standpoint of the city and of the public, if some concerted plan is adopted. That is best for everybody concerned rather than for each individual interest to go ahead regardless of the other.

(Tr. 1488-1489.)

Commissioner EDGERTON. * * * By the way, this report of Mr. Sachse will be introduced as Railroad Commission's exhibit with the appropriate number, which I have not.

The WITNESS. No. 1.

(Tr. 1498.)

Commissioner EDGERTON. Now, Mr. Sachse, did the Engineering Conference suggested at the last hearing of this Commission meet?

A. They did meet.

Commissioner EDGERTON. And as a result of that, is there a report now ready from this Conference?

A. There is a report. (Tr. 1600, 1601.)

I believe that this is a pretty fair summary to say that on the matters of grade crossing elimination there is a very substantial agreement, not only amongst the

Conference members themselves, but of all of the Conference members with the Commission report, with the Engineering Department's report. In other words, it is agreed that elimination of grade crossings, the so-called river crossings is desirable, should be brought about, and that the plans recommended by the Engineering Department are feasible, and should be endorsed. That is true 100 per cent for all of those plans that are common to all developments, regardless of where the union depot is ultimately to be located. On such grade crossings where there is a difference in design, dependent on where the union depot will be, if there is one at all, there is a difference of opinion, to the extent that the engineering representatives that favor the one or the other ultimate depot site, are rather in favor of the one or the other design that goes with that site. It is correct to say, however, that on grade crossing eliminations across the river, that feature is a minor feature. In other words, these eliminations could be brought about regardless of where the union terminal will be, if there is one at all. The same thing is true of Alameda Street and the Alameda Street situation, in other words, there is an agreement on the part of all the Conference members that traffic should be eliminated, through traffic, from Alameda Street to the greatest possible extent, and there is also general agreement that under the various plans as presented, the ultimate relief of Alameda Street can be brought about substantially along the lines as discussed and recommended in this report, in exhibit No. 1.

(Tr. 1604, 1605.)

Mr. GOUDGE. And as you remark in your report on page 247,

"In not a single instance of monumental passenger terminal construction in recent years can it be said that the cost of the station, considered from the railroad operating viewpoint, is justified as a sustaining investment."

A. I am still of that opinion.

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Commissioner EDGERTON. Mr. Sachse—and this is for my own benefit—will you answer this question: Suppose the approach to this question—suppose you were approaching the question of a terminal station from the standpoint of income to be produced by expenditure, and that alone you had in mind, would you build such a depot?

A. I would not.

Commissioner LOVELAND. That is, income from road operation?

Commissioner EDGERTON. Exactly. That is, if you disregarded all the benefits to the community, and so forth, considering the expenditure solely for the purpose of deriving income to the railroad, you would not build the depot?

A. I would not from the standpoint of operating railway expenditures and operating income.

(Tr. 16211/2-1625.)

Mr. GOUDGE. Then, Mr. Sachse, after reading a conclusion and determination as to the needs of the service to be rendered, then cost becomes a determinative factor, as to the manner in which the needs shall be met?

A. It then becomes a very important factor; I don't know whether it then becomes a determinative factor. (Tr. 1630.)

Q. And on the question of the establishment of a union passenger terminal as distinguished from the question of the location of such a terminal, your recommendation that the union passenger terminal should be established and created somewhere was reached by considering mainly the civic side of the question, the advertising value to the city, the attraction and the beautification that such a terminal would give to the City of Los Angeles, and, therefore, its value to the city that you speak of as a city of tourists or visitors; that is true, is it not?

A. No, it is not true. My main reason for believing there should be a union depot in Los Angeles is that the conditions in Los Angeles seem to me naturally established. They are made by nature and by the general development of the city, and I, in my limited experience, know of no other place where the natural development is in the direction of a union passenger depot at a comparatively insignificant cost to a greater extent than in Los Angeles; and that is my main reason for thinking and recommending that in Los Angeles a union depot was the proper thing. That would not be true, necessarily, of any other city where the natural conditions were not present, regardless of civic pride and all of that.

(Tr. 1633-1634.)

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Q. Now, then, from the point of view of the people, the residents in Los Angeles, will you state what is it, in your opinion, that would make a union passenger terminal, as distinguished from different terminals or different roads, desirabe in Los Angeles?

A. The present situation is unsatisfactory.

Q. In what respect?

A. In other words, you have now, considering the steam roads alone, three passenger depots. Two of them are inadequate even for the service that they alone handle, and I believe it is generally admitted that changes, radical changes, in each one of those, considered alone, are imperative and will have to come.

(Tr. 1634.)

* * * * * * * *

Q. Well, now, in what respect does the existence of the three separate terminals, or three transcontinental roads affect me as a resident of Los Angeles?

A. Well, if you drive with your machine across Alameda Street, and you are held up by a passenger train, regardless of whether you want to go to the depot, or not, you are inconvenienced by that situation, and that is a situation immediately arising from the fact that a certain depot is at a certain location and the operation, as a result of it, has to be carried on in a certain manner. And further than that, it seems to me every citizen is, of course, interested to have the best possible facilities in his city whether he uses them all the time, or occasionally.

(Tr. 1635.)

The WITNESS. I would like to say that I did not say in my report and I am not by any means of the opinion, never was and never will be, that this thing is desirable if the city bears the cost. I did not say that and I do not think it can be found anywhere in the report.

(Tr. 1638.)

Commissioner EDGERTON. The Commission will come to order. The Commission has come to this conclusion, and it may clear up some misunderstanding: We announce at this time that no plan for the union terminal passenger station will be seriously considered by the Commission which would involve contribution, direct money contribution, by the city, unless such contribution were voluntarily offered by the city.

(Tr. 1655.)

Q. What about the contribution of money, do you think under all plans the city would have to contribute money, or should contribute money?

A. (Mr. Sachse) I don't think that the city would have to contribute money under any plan.

(Tr. 1660.)

Q. I am informed, Mr. Sachse, that the revised estimates of the cost of the union passenger terminal with its approaches and coach yard recommended in this exhibit No. 1 on unit prices as of March 1, 1920, would be $13,008,517. Do you agree with that estimate?

A. I agree with that estimate with the reservation that I pointed out early this morning. We are not altogether in agreement on the new prices in so far as overheads, salvage and the cost of wrecking cer-

tain existing structures are concerned. Otherwise, I am in agreement.

Q. May we say substantially you are in agreement with that estimate?

A. Yes—pardon me, with this further very clear understanding, that, before we can fix on any cost, in total, we must have a clear understanding as to what items are properly chargeable to the union passenger terminal alone and what items are chargeable to other features of the entire progress.

(Tr. 1670.)

* * * * * * * *

Q. Now regarding the desirability of a union passenger terminal from the point of view of the railroad patrons or passengers, in what respect or respects is a union passenger terminal, as distinguished from a single passenger terminal for a particular road, desirable or valuable or convenient to railroad passengers?

A. It would seem to me that the more unified passenger facilities are from the standpoint of the railroad patron the more convenient it would be for him and the less costly it would be for him.

Q. Will you illuminate that if you can? Take a railroad passenger going East on the Salt Lake road, what, if any, advantage is it to him that the trains of the Southern Pacific come to and leave the same station that he goes to?

A. If that passenger for the East arrives from San Diego, why, he lands at the Santa Fe station, and if he is a stranger he has to find out where the connecting line leads from, and after he has found he has to

go over there, and all that is an inconvenience and expense.

Q. Mr. Sachse, you don't quite understand my question. If you recall, I postulated the passenger leaving Los Angeles on the Salt Lake Railroad. I am not interested in the people of San Diego. And asking if it is any advantage to him, if the fact that, from the same station, the Southern Pacific trains are also departing, is that any benefit to the passengers going out on the Salt Lake road?

A. The question would be where does that passenger come from. He might leave Los Angeles or might come from some other place.

Q. Now, I am trying to develop that. The benefit of the union passenger terminal, were a union passenger terminal built, is derived by the railroad passenger who transfers from one road to another, is it not?

A. He benefits, certainly.

Q. Isn't that the one that does benefit?

A. He does.

Q. What about the other fellow that doesn't transfer from one to the other? Is there any benefit to him?

A. Yes, there is. He has all the passenger facilities in one place. He can make his inquiries or anything else that he may be interested in in that one place, regardless of whether he has any important business there, or not.

Q. So you think that the man going on one transcontinental road finds it a convenience to be able to

make inquiries and to buy tickets on a road that he is not going on?

A. Not necessarily that, but he finds it a convenience and a benefit to have all information and all facilities, passenger facilities, and trains in one place.

(Tr. 1676-1678.)

Q. Now, it is true, is it not, that in different cities in this country the proportion of passengers who arrive at the terminals in that city who are through passengers, and the total number of passengers brought in and taken out of the city by the railroads, varies very much; that is to say, in some cities a much larger proportion of passengers are through passengers than in other cities?

A. That is true.

Q. Do you know from the studies you have made and which you have incorporated in this report, do you know what percentage of passengers arriving in and departing from Los Angeles by steam railroads are through passengers?

A. Yes, we have all those figures as of the time that the checks were made, but I haven't them in my head.

Q. All right, on page 569 there is a study of passengers handled by steam roads in Los Angeles based on actual count September, 1918, and that gives in the last column, at the bottom of the table, last line but one, total per year based on this study, number of passengers arriving and departing on both roads—on all roads, I should say.

A. Three roads, yes.

Q. Making a total of 2,807,580. Have you a piece of paper or a slip-stick there with you?

A. No, I haven't.

Q. Well, it is very simple, 2,807,580 is the total number of passengers arriving in or departing from Los Angeles in a year on the steam roads. Now, on page 258, in the middle of the page, there is a statement based on a tabulation or estimate of the number of passengers transferred.

A. That was page 258?

Q. Yes, 258, middle of the page 77,745.

A. Yes.

Q. Now, if I desire to arrive at the number of passengers arriving and departing from Los Angeles, exclusive of the passengers transferred I should deduct the 77,000 odd from the number arriving and deduct it from the number departing should I not?

* * * * * * *

A. Yes.

Q. And in that way I will get the combined arrivals and departures, exclusive of through passengers, is that not right?

A. Yes.

Q. Now that gives me, and this figure I wish you would check if you will, gives me 2,652,090, as the number of passengers arriving and departing in and from Los Angeles in a year, exclusive of the transfers, is that correct?

A. Yes.

Q. Then we have 77,000 odd passengers, that is right?

A. Yes.

Q. From that I deduce from your computation that the percentage of passengers who transfer to the total number of passengers who did not transfer is 2.93 per cent.

A. We have discussed that matter on page 258.

Q. Yes, I know, but I want you to tell me about those figures.

A. If you do it that way, you get that approximate percentage, yes.

(Tr. 1680-1682.)

Commissioner EDGERTON. Let me see if I understand clearly the statement that you have just read from the letter of transmittal, Mr. Sachse. That—will an expenditure equal to the estimate which you have made of $33,000,000, be made, in any event, by the railroads? Do you mean at that the present sites of the passenger stations?

A. This is my opinion, Mr. Commissioner, that the same amounts of money will approximately be expended, whether you have a union depot, whether you have individual development of the railroads, or whether you have a partial union depot, ultimately, in fact, I believe that if you consider all costs, that is, costs of operation as well as first costs, and if you consider the amount of property devoted for this purpose, that this —that a union terminal scheme at the Plaza, as outlined here, is the cheapest in the long run, when you consider the city and railroads and every one else.

(Tr. 1696.)

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Commissioner EDGERTON. Mr. Sachse, thinking of this now solely as railroad expenditures, as I understand it, your estimate of $33,000,000 would be spread over a term of years?

A. Yes, sir.

Commissioner EDGERTON. That is to say it would not be expended in any one year, but over a period of years. How many years do you estimate?

A. We have mentioned several places.

Commissioner EDGERTON. 20 years for the $33,000,000?

A. Yes, sir.

Commissioner EDGERTON. Now contemplate, if you please, the railroads going ahead as they propose according to their plans, what would their expenditures be for like purposes in that 20 years, in your judgment?

A. I think it would be greater.

Commissioner EDGERTON. Greater than the $33,000,000?

A. Yes, sir.

(Tr. 1697-1698.)

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The WITNESS. I don't take into account operating expenses in that statement. If you take into account operating expenses then another situation arises.

Commissioner EDGERTON. Explain that.

A. But operating expenses, of course, are not borne by the railroads, they are shifted by the railroads. In other words, I believe that the operating expenses, under separate facilities, are going to be greater, very much greater, and they are going to be progressively

greater in the future than under unified operation, and that is also a cost, but that cost is not borne directly by the railroads.

(Tr. 1699.)

Q. Now, it is an integral part of this Plaza terminal scheme recommended in exhibit No. 1 that the Pacific Electric road should be so routed and its facilities so changed as to require the Pacific Electric cars for the south, for the north and northeast divisions, that is, the San Gabriel Valley and that neighborhood, to go down Main Street in a subway, is it not?

A. Yes, that is our recommendation.

(Tr. 1715.)

Q. Would you now be willing to make a recommendation one way or the other as to whether the Pacific Electric local cars, that is, street cars, are to be taken off the surface of the streets?

A. My idea would be that the rapid transit facilities, the subway and that elevated would be mainly for that purpose, should have first consideration, and that the local traffic would have to be handled and should be handled for a considerable time to come on the surface of the streets.

Q. Then it would leave our local cars on the street—take our South Pasadena Street car service, for instance?

A. Yes.

Q. Now, is there any provision made for getting that street car service there onto the elevated or across the river?

A. No, there is no such provision made, although—Mr. Weeks corrects me, he says there is, I am in error. I was going to say, and if I am in error I wish Mr. Weeks would correct me, ultimately the entire street car traffic, whether it is on the yellow lines or on the P. E. lines, should be treated as a whole, it seems to me, considered as a whole.

Q. Well, treating them as a whole, you have made no disposition or recommendation for the disposition of the local street car service, other than handling them on the surface of the street?

A. That is my recollection.

* * * * * * * *

Mr. KARR. Now, in the proposed subway up and down Main Street is there contemplated any terminal in the vicinity of 6th and Main Streets, station facilities for storing extra cars for unexpected traffic?

A. 6th and Main?

Q. Yes, or in that vicinity?

A. For the P. E. traffic?

Q. Yes.

A. No, not in addition to what you have now, but this is contemplated, that if our plan is carried through, the 6th and Main Street station will no longer be the terminal, the terminus of the rapid transit trains, as distinguished from the local cars.

Q. Yes.

A. To the extent that it is now. In other words, it will be more of a station, rather than as a terminus.

Q. Well, there would be no terminus then on the—of the interurban cars now coming from the north and east?

A. There might, that station might be the terminus for some of the lines, and for some of the cars, but not to the extent that it is now or will be.

Q. Where would be the terminus, if any?

A. Well, there would be no necessity, because you would have a loop or a continuous track, and your trains would keep going.

Q. Not stop at the station at all?

A. Yes, they would stop.

Q. Well, I mean only temporarily to load and unload passengers?

A. That is right, yes.

Q. Was it contemplated in the investigation as crystallized in your recommendation in exhibit 1 that a connection should be made between this subway and the present elevated of the Pacific Electric in the vicinity of 6th and Los Angeles Streets?

A. I don't think there was. Am I right, Mr. Weeks?

Mr. WEEKS. That is right.

Mr. KARR. Then there would be no connection, so far as this report embodied in exhibit 1 goes, for a connection between the north and south divisions of the Pacific Electric?

A. No physical connection.

Q. Then there would be no possibility of getting the cars from the north and east division to the shops at Torrance, except for the use of one of the steam railroads?

A. Well, I would not say that. There would be no possibility to get them from one division onto the other at that point, at 6th and Main.

(Tr. 1735, 1737.)

Mr. KARR. How deep was it proposed, or is it proposed to construct the subway on Main Street in the vicinity of 6th and Main, Mr. Sachse, if you know?

A. We have a plan and profile of that, haven't we?

Mr. WEEKS. No.

Mr. KARR. It would be in the neighborhood of 50 feet under the ground, would it not?

A. It would be a deep subway.

(Tr. 1738, 1739.)

Mr. GIBBON. Mr. Commissioner, I desire to ask Mr. Sachse some questions.

Q. Mr. Sachse, this matter was put into the hands of the Commission, or its services requested, by the city government of the City of Los Angeles, I believe?

A. In part, yes, and in part by other parties.

Q. Yes. The primary reason given for appealing to the Commission, and the condition which the Commission were particularly asked to observe, were the grade crossings in the city, were they not, and the possibility of eliminating those?

A. That was the original reason, as I understand it, for the commencement of this proceeding. Later on a number of other matters were consolidated with the grade crossing matters.

Q. However, it may be said, may it not, that the elimination of grade crossings was the main reason for the undertaking originally?

A. I think the grade crossing brough all this agitation about.

Q. I will ask you if you did not find, when you made your examination here, the condition to be that there were three railroads in Los Angeles that had grown up without any particular idea of serving any purpose except for the purpose of railroads, and they had developed their main tracks and switch tracks and industrial tracks, and so forth, without any reference, apparently to avoiding grade crossings, or anything more than to accomplish the immediate purpose in hand?

A. Mr. Gibbon, I would put it this way, I would not say they had only the interest of the railroads in mind, I would say that, until recently, they grew up without any thought of co-ordination or co-operation, and only since the period of Federal control and a little bit prior to that, and subsequently to that, since the Salt Lake and the S. P. and the P. E. have made common plans, has that situation changed.

Q. These plans have not been carried out, have they?

A. Not all of them, but I think it is well known that these three roads act together in a number of matters.

Q. Yes, but I am speaking now with reference to the position of the road in the city, or on the city streets, and so forth, no plan for eliminating any grade crossings have been carried out up to the time you took hold of the matter, had they?

A. That is true.

Q. Yes. Isn't it a fact, Mr. Sachse, that in this plan known as the Plaza plan, where you coordinate and consolidate passenger service and tracks of the three

existing steam roads here, that the elimination of more grade crossings is brought about by that plan than by any other of the plans that you considered?

A. That is true.

Q. For instance, take the Southern Pacific plan. If that plan had been carried out as suggested by the engineers of your road it would have closed some important streets and left dangerous grade crossings on other important streets, would it not?

A. Yes, sir.

Q. Whereas, the plan called the Plaza plan opened up all east and west streets of importance to the business center of the city and eliminated grade crossings on all those streets, did it not?

A. Yes.

Q. And no other plan did?

A. No other plan did exactly to that extent, although the Santa Fe plan, so-called, accomplished practically the same result as far as grade crossings go.

Q. As far as grade crossings?

A. Yes.

(Tr. 1754-1756.)

* * * * * * * *

Mr. GIBBON. Mr. Sachse, the Southern Pacific plan, as I have designated it, meaning as you treated it, contemplated the closing of two or three important east and west streets, did it not?

A. It contemplates the closing of those streets, or the maintenance of grade crossings at those streets?

Q. Yes.

A. I would rather have you give me the streets that you have in mind and then I can talk a little more definitely may be.

Q. I think Fourth was one of them.

A. Yes.

Q. And 3rd, I think, or 5th, I don't recall the streets just now, except Fourth I know is one of them.

A. 4th is correct.

Q. I have in my hand what apparently is a kind of circular that—it says it is published by the Business Men's Association of Los Angeles—which I assume has been rather broadly circulated in the city, because I received a copy of it through the mails and I know a number of other men who did, and in which this statement is made, "Mr. Sachse lays great stress on the æsthetic possibilities of a union station in Los Angeles, and chiefly on that score and because of its advertising value to the city, he recommends that the union station be built on the plaza site."

Was the æsthetic possibility of the plaza site station and its value as an advertising medium to the city the chief reason why you recommend that union station there?

A. I would say that statement is not a fact.

Q. It is not a fact?

A. No.

Q. I didn't so gather it from your report, but somebody seems to have interpreted it otherwise, and, therefore, I asked for your interpretation. The pamphlet, or whatever it is, goes on to state that the arguments you

advance in its favor are based upon city planning, city pride or city advertising, and so forth. When you referred to city planning there, referred to the elimination of grade crossings, did you refer to them as a part of the city planning?

A. I think elimination of grade crossings is a part of city planning, yes.

Q. It is a part of city planning?

A. I think it is, decidedly.

(Tr. 1757-1758.)

Q. So that as I understand it, the only crossing which you think—only grade crossing that you think would be not eliminated under the ultimate Salt Lake-Southern Pacific plan, as compared with your Plaza plan, would be the 4th Street and Alameda?

A. If that is the ultimate S. P. plan, then I would have to say yes, and it would have to be understood that the cost estimates would have to be made for all of that work, and the total then compared with our total.

(Tr. 1794.)

* * * * * * * *

Q. Now, then, if you had a viaduct across—over the Southern Pacific-Salt Lake tracks on the east at appropriate points, and carried those over the Santa Fe tracks on the west, wouldn't that be the only way you could treat it?

A. You could do it that way, yes, but I am convinced, Mr. Halsted, in my own mind—I may be mistaken—that once a separate treatment of the railroads has been decided upon that, henceforth, there will be individual

development, and that development will be along the most economical lines at any given time, and the City of Los Angeles might just as well forget the possibility of a comprehensive treatment of the grade crossing situation, or of any other situation thereafter.

(Tr. 1804-1805.)

Mr. HALSTED. Well now, the grade crossing elimination can be considered and treated separately from any union passenger station, can it not, so far as the grade crossings along the river bank on either side are concerned?

A. Yes sir.

Q. And the grade crossing elimination at those points would receive the same treatment, no matter where your union station would be located?

A. Yes sir.

Q. That is just the point I am getting at.

A. Except with some minor modifications.

(Tr. 1806, 1807.)

Mr. DURBROW. Mr. Sachse, in answer to counsel's question you expected two crossings which would not be eliminated. What were those crossings please?

A. 4th and Alameda, and Main and Redondo is the second.

Q. Now, those two crossings could be eliminated under the Southern Pacific-Salt Lake plan, could they not?

A. They could.

Mr. DURBROW. That is all.

The WITNESS. But—well, no, I don't think 4th and Alameda could. It could, but you would have to have

a two level station at the Arcade, and that nobody would contemplate.

Commissioner EDGERTON. Well, Mr. Sachse, now to clear up this matter of comparison finally, if we can, is there any plan before this Commission, any definite plan that is directly comparable with your Plaza plan? And by that I mean this, is there any plan as comprehensive in its scope as your Plaza plan?

A. I would say no.

(Tr. 1810-1811.)

H. B. TITCOMB,

recalled.

Direct Examination (Resumed).

Mr. DURBROW. What official position do you occupy, Mr. Titcomb, with reference to these defendants?

A. Vice-president of the Pacific Electric.

* * * * * * * *

Q. Mr. Titcomb, you formerly were in the employ of the Southern Pacific Company?

A. Yes sir.

Q. In what capacity, please?

A. As maintenance of way engineer.

Q. How long were you acting in that capacity?

A. Well, as engineer for the Southern Pacific Company, since from 1901 to 1917, in various capacities, in engineering capacities.

Q. And during that time——

A. 1891, I should have said, to 1917.

Q. During that period how much time did you spend in Los Angeles and the vicinity of this city?

A. I first came here in March, 1908, resided here until 1914; 1914 to 1917 my headquarters were in San Francisco, but jurisdiction was maintained over this territory. In 1917 I was made superintendent of the Stockton Division in Stockton, therefore relieved of the engineering work. In September, 1918, was transferred to Los Angeles as vice-president of the Pacific Electric Railway Company.

Q. During your incumbency, did you have anything to do with reference to the preparation or formulation of the plans of what has been characterized here as the Southern Pacific-Salt Lake-Pacific Electric plan, which we formerly referred to as the Titcomb plan?

A. Yes sir.

Q. And what part did you take in preparing those plans, Mr. Titcomb?

A. Well, under the general jurisdiction of the engineer of maintenance of way, Mr. Barlow, in San Francisco, and also Mr. William Hood, I was the direct engineer in charge of the presentation of these plans, as far as the Southern Pacific was concerned.

Q. And with whom did you co-operate?

A. With the engineers of the Salt Lake Railroad and the Pacific Electric Railroad.

Q. Yes. Now, as there has been some confusion with reference to the scope of the original plan I have characterized as the Titcomb plan, will you please state, very generally, what you proposed to accomplish by

this Titcomb plan, which is now before the Commission formerly for approval?

* * * * * * * *

The WITNESS. The basic plan, as introduced in the former hearing, known as the Titcomb plan at that time, contemplated the entire elimination of the Pacific Electric interurban traffic, as far as the northern and eastern division and southern division, eliminated from the streets of Los Angeles, except crossing by elevated, as far as 9th Street, with the further reservation that this dropping to 9th Street, which was several years ago when this plan was first submitted, was the first step in an ultimate development of carrying the elevated further south. It could be carried to 14th Street, it could be carried to Slauson, it could be carried to San Pedro, if conditions warrant in the future, so that the basic plan, when we started in our first—or presented my first plan of 9th Street, was simply at that time that we did not consider that financial conditions would warrant separating grades at 9th Street, but that since that time the—it may be advisable to extend it as far as 14th, and it is really a part of the original plan, and the original study contemplated, as far as the steam roads are concerned, the plan that was originally submitted, there is no change in, that I recall, except possibly the treatment at 7th Street. But this was covered fully by the testimony when I was on the stand showing the alternate scheme which could be adopted, in the judgment of the Commission or its engineers. And the plan that we now call our plan is exemplified in this sketch drawing which contemplates, as far as the South-

ern Pacific is concerned, the routing of its passenger trains off of Alameda Street, those through freight and passenger trains and light engine movements, off of Alameda Street, by using the easterly bank of the Los Angeles River and what is known as the Salt Lake right of way and by the proper elevated structures to get across the Los Angeles River into the passenger station as it now exists at 5th and Central without crossing any intervening streets at grade. The original plan and layout contemplated ultimately putting in of additional viaducts over the Los Angeles River when, in the judgment of the Commission or the governing bodies they were essential and necessary. These additional viaducts as suggested or shown, are such they can be put in any time that conditions warrant or it is found necessary by the governing bodies, we will say at 9th Street, 7th Street, Aliso Street, Macy Street and North Main Street. The balance of the streets have viaducts over them, or over the river, rather, and over the tracks of the steam road, namely, the Los Felice bridge, North Broadway, North Spring Street bridge, First Street viaduct and the 4th Street viaduct. This plan, as far as the Salt Lake was concerned, contemplated the bringing of the Salt Lake into the 5th and Central Avenue Station, known as the Southern Pacific Station, by the elevated across the intervening territory between Alameda Street and the Los Angeles River, without crossing any street at grade.

Mr. DURBROW. Now, Mr. Titcomb, before your plan was presented to the Commission for approval there had been adopted by formal convention, by both the

Salt Lake and the Southern Pacific Companies—that plan had been adopted, had it not?

A. Yes sir.

Q. And as I understand it, contemplated the removal of all the Pacific Electric trains from the grade crossings in so far as the territory covered by the plan was concerned, and the relief of Alameda Street by the discontinuance of the operation of through freight and passenger service and your light engine movement.

A. It did.

Q. Now, I would like to ask you, please, if the plan which was at that time proposed and which is now before the Commission for its formal approval would permit of the carrying out of the further suggestions of grade elimination which have been proposed in exhibit No. 1 before the Commission, or any other elimination of grades which may be subsequently proposed in the City of Los Angeles?

A. I would.

(Tr. 1889-1894.)

Q. Well now, I will ask you this further question, Mr. Titcomb: Does the Southern Pacific or, rather, does the Titcomb plan permit of the elimination of all grade crossings which are proposed to be eliminated by Mr. Sachse's Plaza plan?

A. It does.

Q. No interference could be made in one or another if the plan as originally proposed was adopted?

A. It would not interfere in any manner; lends itself to any suggestions contained in the Sachse report.

Q. Now, I direct your attention, if you please, to the crossing at 4th Street, concerning which something has been said, and ask you if the Titcomb plan would permit of your crossing there being treated in the manner which would remove the objections which have been interposed by Mr. Sachse?

A. Yes sir, they can so be treated.

Q. In what manner?

A. Oh, there are several manners, several ways it could be treated. It is entirely feasible and possible to put a subway on 4th Street beginning at Central Avenue and coming down on a 5 per cent grade and getting under the necessary trackage that would be continued across 4th Street to the property of the Southern Pacific just northerly of 4th Street. This subway would continue across under Alameda Street and come out on 4th Street east of the Alameda Street by 5 per cent grades, so that there would be no trouble with reference to the eliminating of the grade crossing feature there if it was found essential and necessary to spend the money.

Q. Are there any other methods of eliminating that situation?

A. Well, we might close 4th Street like they close Macy Street in the Sachse plan at the plaza. They closed streets there indiscriminately, main arteries, closed Alameda Street, for instance, cut off Los Angeles Street, for instance, and gave by-passes to get around a block or two. That same condition can be done here and you can by-pass by 3rd Street if desired. Or, another plan: You could move 4th Street about 250 feet

northerly from its present location; by such a location we could have a crossing without crossing any of these express tracks or other tracks which are now across 4th Street, except the tracks that would remain on Alameda Street as the general industry switching tracks, in a direct manner, without lengthening the distances from Central Avenue to, we will say, any of the locations east of the river, the Santa Fe.

Q. Have you a map or sketch of that?

A. I have a general sketch, yes sir, that has been prepared yesterday and has been in my mind for some time.

(Tr. 1896, 1897.)

Q. Well now, Mr. Titcomb, with the plan that you propose there how would the switching movement across 4th Street be eliminated?

A. The present 4th Street would be entirely closed and by the plan all of the engine movements or other switching movements would cross the existing 4th Street but would not cross 4th Street as proposed.

Q. So that all of your switching would be eliminated with 4th Street?

A. Yes sir. There are other means——

Q. In the event that either of the plans which you have proposed, for instance, the subway or this plan shown by the blue print, were not adopted, is there any other means of handling the Salt Lake Station under the Titcomb plan which would obviate the necessity of the operation of those engines across 4th Street?

A. Yes sir, by backing the trains in as is done in most of the large absolutely stub, what are called stub

terminals. Take the St. Louis terminal, for instance, the train is backed into the station so that the passengers are the nearest point to the waiting room or exit room. The same way with loading. By backing in this train they turn on the Y near the entrance to the yard and back into the station under the interlocking plants and have been doing it for many years. This same method of operation was one of the contemplated schemes, possible schemes, of the plan, so-called Titcomb plan, by turning on the Y immediately east of the river and backing in under the interlocking plan, into the depot, without any hazard in the operation, which is an entirely practical matter and where you have no grade crossings, no streets or other interference.

Q. And the Y shown on the plan before the Commission would serve that purpose?

A. It would. In fact, it is so designed in its grades that the train going in from the north and passing the Y, the grade is made .6 instead of 1 per cent so that there would be a reasonably clear back-up movement to get into the passenger yard, the passenger station. This was contemplated in the original design.

Q. Now, any one of the methods proposed by you would remove the objections which have been interposed to the 4th Street crossing, would they not?

A. Certainly, yes.

(Tr. 1899, 1900.)

Q. Have you prepared any figures to show the comparative cost of the removal of grade crossings on the plaza as compared with the Titcomb plan?

A. Well, the figures that have been compiled by the various engineers I have studied and watched. In fact, I have sat in on the conference as far as the railroad engineers are concerned, practically the full time. And I do find that the grade crossing elimination of the Southern Pacific-Salt Lake plan can be accomplished in toto $7,477,210. That "in toto"—I say that does not include the three studies we have just mentioned, namely the 4th Street situation, Main and Redondo and the North Spring, which we have not considered was essentially necessary and did not warrant the expenditure. But if in the view of the governing bodies it did warrant it, why, it would be added to it. I might say that similar figures which are complied from the engineers' reports, are that the grade crossing elimination along the Los Angeles River, known as the Sachse-Plaza plan, would be $9,584,385, with $1,806,244 to be added to it for "other localities". That figure, "other localities", likewise does not include a viaduct at Main and Redondo nor one at North Spring and Redondo.

Commissioner EDGERTON. And you say that the seven million odd——

A. Seven and a half, roughly——

Commissioner EDGERTON. Would eliminate the same number of grade crossings as the Sachse-Plaza plan?

A. Yes sir.

(Tr. 1901, 1902.)

Commissioner EDGERTON. Pardon me, which figures are we to compare your $7,400,000 with, that is what I want to know?

A. With the figures shown in Exhibit 2 where the grade crossing elimination along the Los Angeles River, according to the Conference report, would be $9,584,385. In addition thereto he says, "other localities", $2,481,-783. These other localities are such as a viaduct on Macy Street, the North Main viaduct, the Santa Fe subway or the subway at Butte Street and Santa Fe Avenue in the southern part of the town, making those comparable, and taking out the North Main Street viaduct and eliminating the Santa Fe and the Butte Street figure, it reduces that figure of $2,481,000, as shown in exhibit 2, to $1,806,000.

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Mr. DURBROW. It shows a difference in cost in the elimination of grades under the Sachse-Plaza plan, as compared with the Titcomb plan, does it not?

A. It does.

(Tr. 1904, 1905.)

Q. Therefore, by comparing the two schemes, to get absolutely the comparable relief, we get a total of $16,-841,988 for the so-called Titcomb plan as against $35,-404,677 for the Sachse-Plaza plan, or about half the cost. Now, of course, that don't include the $10,000,000 that is spoken of yesterday for elimination of grade crossing to South Pasadena or Pasadena by the combining of the Salt Lake and the Santa Fe. Add it to both sides if you want to, and we have still got a difference of $18,000,-000 in favor of the Southern Pacific plan. So, therefore, I think the figures are comparable that I have given for the parallel reliefs they will accomplish.

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Mr. DURBROW. Mr. Titcomb, at the time of adjournment, you stated that the cost of the Plaza plan in Mr. Sachse's arrangement was $35,404,637 as compared to the cost of the Titcomb plan of $16,841,988. I understand you to say that includes the elimination of grade crossings and provides the terminal facilities themselves. That is true, is it not?

A. Yes sir.

Q. It does not take into consideration, as you stated, the elimination of grades between Los Angeles and Pasadena?

A. No.

Q. Which should be added to these figures in equal amount in the event that that entire scheme or recommendation is carried into effect?

A. That is true.

Q. Well now, do those figures, this $35,000,000 and this $16,000,000 contemplate that the money should be spent by the railroads, or was that the entire expense that should be apportioned between the different parties in interest as their interest may finally appear and be determined?

A. That was the entire expense that would be apportioned among the various interests, such as the railroads, and a portion to the city probably on the grade crossing viaducts contemplated especially along the river.

Q. Now, the figures which were revised by the Engineering Committee relating to the union depot structure itself, what amount was allowed, do you remember?

A. No, it is now shown on the detail, but I think it was a million and a half on the revised figures with $1,000,000 on the original estimate. I am not positive of that, but that is my general recollection.

Q. You are familiar with the original cost of the Southern Pacific structure?

A. Yes sir.

Q. But are you prepared to state what it would cost to duplicate the Southern Pacific structure now at the present time?

A. The structure itself, outside of the trackage, with the facilities that went with it, such as the power plant and the subway under the tracks, could not be duplicated for $1,000,000 in my judgment.

(Tr. 1906, 1909.)

Commissioner EDGERTON. Mr. Titcomb, how long do you look ahead when you say that the Southern Pacific plan, in your judgment, is the best one? Do you believe that, for instance, for many, many years to come the Arcade site is—is and will be a proper site for a passenger terminal for the Salt Lake and the Southern Pacific?

A. Yes sir.

Commissioner EDGERTON. How many years would you say?

A. 40 years.

Commissioner EDGERTON. Now suppose the Santa Fe were brought in, would it still be adequate for 40 years?

A. Yes sir, in my judgment.

Commissioner EDGERTON. Now, Mr. Titcomb, do you believe in a union passenger terminal for the City of Los Angeles as against the separate terminals for the

Santa Fe and the others, for the Salt Lake and Southern Pacific?

A. I don't believe there is any necessity for a union passenger station in the City of Los Angeles.

Commissioner EDGERTON. You don't believe, for instance, that there would be a substantial saving in operating expenses?

A. It is not borne out by the practices of other roads, that saving in operating expenses commensurate with the tremendous overhead that is necessary to be carried.

(Tr. 1927.)

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Commissioner DEVLIN. Do you believe in the joint use by the Southern Pacific and Salt Lake lines, Mr. Titcomb?

A. No, sir, to be frank with you, that was my testimony in here before, Mr. Commissioner.

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Different cities have different problems. This city is a terminal city, in practically every sense of the word. It has been shown here by the testimony that 97 per cent of our travel is terminal travel.

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Commissioner EDGERTON. You are opposed to even the Salt Lake going into the Arcade?

A. Yes, sir.

Commissioner EDGERTON. Now we have Titcomb plan 'A', I suppose, or something of that sort.

Mr. DURBROW. Let Mr. Titcomb explain.

A. May I explain? I think it was brought out, clearly set forth in my previous testimony, it was a business necessity. I want to say, as an operating man, feeling for the Southern Pacific Company, a previous officer of the Southern Pacific Company, that there is no necessity, from the Southern Pacific standpoint, of letting the Salt Lake in there, and they lose prestige, they lose advantage, they lose the benefit of the best location in the City of Los Angeles for a depot. But you must weigh other circumstances or conditions to offset that. We were confronted with a situation that we had to get off of Alameda Street, we appreciated that the grade crossing elimination of the City of Los Angeles which had to be taken care of, and the Salt Lake gave us the answer. They had the property, they had the avenue on which we had to travel. In other words, they had the whip hand, and I sat in the negotiations and argued this with Mr. Nutt for months and months. I have seen the traffic officers' observations, all our traffic officers did not consider it a good thing, but it had to be weighed against the advantages we had to have. We had to have the route out of the city, and we considered the value of that commensurate and allowable, or I may say commensurate is the word to the advantages that we would lose by having the individual and isolated location, and that was upon what it was built at the very outset.

Commissioner EDGERTON. Mr. Titcomb, are you influenced by those very considerations in objecting to the Santa Fe coming into this Arcade?

A. Generally I would say, as an operating officer, yes, from strictly a traffic standpoint, yes; this is the best location for our business.

(Tr. 1929-1931.)

* * * * * * *

Commissioner Loveland. Mr. Halsted, the witness has explained why the Southern Pacific is willing to join with the Salt Lake in the union depot. Now have you any explanation or reasons as to why the Salt Lake is willing to join with the Southern Pacific?

Mr. Halsted. It is just as Mr. Titcomb has stated, I think that was gone into rather fully by Mr. Nutt, but I will refresh your memory on it if you like.

The Salt Lake Company has been endeavoring for years to build a suitable station in the City of Los Angeles. We are more ashamed of our present ramshackle building at First and the river than any one else is, and we have been endeavoring for several years past to build a suitable structure. We first talked of building one at First Street, but the rapid growth of the city to the south and west led us to believe that First Street was not the proper site for the depot. Then we acquired some additional property in the vicinity of 7th Street and the river, expending several hundred thousand dollars, the property fronting on 7th Street, and employed architects, and had a design for a depot drawn and that was to be the station fronting on 7th Street east of the river. It required—the operating conditions required two more tracks across 7th Street than we now have. The matter was presented to the Los Angeles City Council and we thought they would

approve of the situation because they had been informally consulted, but when it came up formally before the council in a committee, immediately this separation of grades came up and the viaduct question was injected into the situation, and whether there was to be a viaduct at 7th Street, or whether there was to be a continuation of the grade crossings there was discussed back and forth, and we could not get any result, we could not get any action, and, of course, we could not build the depot until we knew whether there was to be a viaduct, or whether there was to be a continuation of the bridge at grade, so that our next step was to take up again—it was not the first time—but, again, negotiations with the Southern Pacific.

(Tr. 1935-1936.)

Above all is the cost—it is not the controlling reason, but one of the reasons is this cost which, as I say, of course, so far as I have been able to learn, the same facilities will cost $16,000,000 more at the plaza and the expenditure is not warranted, and I don't think could be financed at this time. I don't know just how it could be.

(Tr. 1943.)

Cross-Examination

of H. B. TITCOMB.

* * * * * * *

Q. (By Mr. Workman.) Isn't it a fact that it is necessary for you to use the space on the north side of 4th Street there at the present time in order to serve—to take care of your express business?

A. It is considered one of the industry.

Q. In other words, that car load express business can not be taken care of on the present Arcade site as it exists today?

A. Well, I would say so, not all of it could be, no, we need that proposition as it is up there for the head end cars known as the carload express.

(Tr. 1981.)

Mr. STEPHENS. Mr. Titcomb, I am not sure that I understand your views with regard to the elimination of the grade crossings. You have stated that it was possible to eliminate, under the Southern Pacific-Salt Lake plan, all of the grade crossings that are eliminated under the Saches plan.

A. I did.

Q. Now did I understand that you have stated that the—your companies would be willing to put into effect those plans to eliminate the grade crossings, and would share or participate in the expense willingly if ordered by the Commission?

A. That is my recommendation. Mr. Shoup is here as an executive officer and will make that statement.

Mr. SHOUP. I will confirm his statement.

Mr. KARR. That is our position.

(Tr. 1983.)

H. B. TITCOMB,

Redirect Examination.

Mr. DURBROW. Mr. Titcomb, yesterday some questions were asked you relating to the capacity of the Main Street terminal or depot of the Pacific Electric and whether it would accommodate the traffic of the

northern and southern divisions. What have you to say with reference to that?

A. I think the 6th and Main Street depot can easily handle four times the peak travel we have had in that place.

(Tr. 1999.)

Q. Now, in response to a request of the Commission, Mr. Titcomb, you have had a statement prepared showing the items on these comparative aggregate costs. As I said, Mr. Commissioner, these were completed at 12 o'clock last evening and we have but a few copies here. I will have copies for other counsel. From what sources were these figures derived, Mr. Titcomb?

A. Under the statement headed "Comparative statement showing cost of complete grade crossing elimination between S. P.-S. L. plan and the plaza plan", this S. P.-S. L. plan, column of figures which appears in the first column and with a second column of summaries, are the figures that have been compiled by the railroad engineers using the unit costs that were approved by the engineers' conference to show the necessary money outlay for the carrying out or putting into effect the so-called Titcomb plan, amounting to $16,841,988. The column headed "Plaza" which is the designation of the Sachse-Plaza plan, shows parallel columns, figures that are common to both or that are needed in one and not needed in the other, which total $35,348,624. This is a slight difference in the figure I read yesterday of $35,404,000. It is a computation

I think with reference to the Baker Street viaduct connection to the North Broadway bridge which—I may be mistaken—the engineer's conference considered was not necessary, but that was only a small amount, a few thousand dollars.

(Tr. 2000, 2001.)

Commissioner BRUNDIGE. On another point, I understand that these estimates are new money entirely?

A. Absolutely.

(Tr. 2003.)

* * * * * * *

Commissioner EDGERTON. May we interrupt to call attention to a matter at this time so it don't escape attention? As we understand it, Mr. Sachse, in his report, recommends certain grade crossing eliminations, resulting from a change in the present Santa Fe tracks to Pasadena. His recommendation goes to the extent of, as we recollect it, that the Salt Lake and the Santa Fe make joint use of these tracks. That is correct, isn't it, Mr. Sachse?

Mr. SACHSE. Make use of the right of way or of the tracks either, for part of the distance.

Commissioner EDGERTON. Now, what is the position of the Santa Fe and the Salt Lake Railroad as to such joint use of right of way or track?

(Tr. 2004.)

* * * * * * *

Mr. HALSTED. As far as the principle is concerned, we are not opposed to the principle of grade crossing elimination. We are in favor of it, but whether we could consent to this agreement or arrangement at

this time is, obviously, impossible for us to state, because we don't know what it involves, and we don't know what cost would be imposed upon our company. It is largely a matter of cost.

Commissioner EDGERTON. It has a little different aspect, I think, than that, Mr. Halsted, because of the position taken by both the Santa Fe and Southern Pacific-Salt Lake combination—I mean "combination" in the sense of combination of this proposed Southern Pacific terminal—on your part you don't want the Santa Fe in that terminal; the Santa Fe says it does not want to come into your terminal.

Mr. HALSTED. Yes, there seems to be agreement there.

Commissioner EDGERTON. Mr. Titcomb explains, on behalf of the Southern Pacific-Salt Lake Railroads that that is largely because of business conditions, railroad business. Now, what we are inquiring about really here is: do those same conditions prevail as to such joint use of tracks?

Mr. HALSTED. Not at all. We have joint trackage arrangements with the Santa Fe, we run nearly 100 miles over a joint trackage arrangement, and there is no objection to entering into an arrangement with the Santa Fe, as far as that is concerned.

Commissioner EDGERTON. It really, then, is a matter of cost and efficient operation only?

Mr. HALSTED. Yes, sir.

Commissioner EDGERTON. What about the position of the Santa Fe, Mr. Camp?

Mr. CAMP. If the best working out of the plan for the elimination of grade crossings between Los Angeles and Pasadena involves some joint use of trackage, the Santa Fe, as I understand it, has no objection to that.

(Tr. 2005-2006.)

T. H. WILLIAMS,

a witness called in behalf of the Southern Pacific Company, being first duly sworn, testified as follows:

* * * * * * *

Q. Mr. Williams, what official position do you occupy with the Southern Pacific Company?

A. I am assistant general manager of the Southern District, with headquarters in Los Angeles.

Q. What has been your railroad experience?

A. I started on the Chicago & Alton Railroad in the early nineties as a freight brakeman and a switchman; I switched in East St. Louis and Chicago yards and broke on freight and passenger there for several years, and during the World's Fair in St. Louis in 1904 I was placed in charge of the distribution of passenger equipment, and during the fair period directed the make up of passenger trains. From there I went into the general offices of the Chicago & Alton at Chicago and was made chief clerk to the superintendent of transportation. Then I came to the Southern Pacific as car distributor on the Western Division of the Southern Pacific at Oakland, and, leaving here, went back to the New York Central Line as superintendent of car service of the Indiana Harbor Belt Railroad, a belt line

running around the City of Chicago. I returned from the Indiana Harbor Belt to the Southern Pacific as inspector of transportation, representing Mr. W. R. Scott in all transportation details on the line, and traveled for Mr. Scott for 4 years and was then made assistant superintendent of the Stockton Division at Stockton, and then assistant superintendent of the Sacramento Division at Sacramento. From there I was sent to the Tucson Division as superintendent at Tucson, Arizona, and then was made superintendent of the Western Division at Oakland Pier, remaining there 2 years, when I was brought to Los Angeles and made assistant general manager.

Q. The operation of the terminal at Los Angeles is under your direct supervision, is it not?

A. It is.

Q. And are you familiar with the operations conducted at the terminals of these different eastern cities which you have mentioned?

A. Yes, to a great extent.

Q. And you had direct charge of the operation of the Southern Pacific's terminal at the Oakland Pier, did you not?

A. As superintendent, yes, sir.

Q. I would like you to state, please, what is the capacity of the Southern Pacific terminal—passenger terminal facilities—at Los Angeles.

A. Well, we have 8 train tracks and 2 run-around tracks.

Q. Have you prepared a chart showing the number of trains arriving and leaving the Southern Pa-

cific depot at the present time, and have you also shown in that chart the time of arrival and departure of the Salt Lake trains, assuming that they were brought into that same depot?

A. Yes, sir.

Mr. DURBROW. Now I would like to have this in evidence and marked as our

EXHIBIT No. 29.

Salt Lake-Southern Pacific.

Commissioner EDGERTON. It will be so received and marked.

Mr. DURBROW. Will you please explain this chart, Mr. Williams, and state what it is designed to show?

A. We took the present time table of the Southern Pacific and Salt Lake, present working time table, to indicate the total number of passenger trains in and out of Los Angeles as represented in their present working schedules. It gives a total of 59 trains, and spreading these 59 trains out on this chart in a period of 24 hours shows how they would arrive and depart, and the hours, and it shows, also, the total number of trains that would be handled under present schedules at any one hour, or say the peak load of the day.

Q. What number of trains would be handled at the peak load, under present joint operation?

A. 8 trains, including locomotive movements.

Q. Now what, in your judgment, is the capacity of the Southern Pacific passenger terminal at the pres-

ent day? How many trains could be handled there in addition to these 59, under the present lay-out?

A. We could easily handle 100 trains there with the present lay-out.

Q. 100 trains?

A. Yes.

Q. What would be the capacity of the same facilities if you had 12 tracks in your depot?

A. You could handle, without any trouble at all, from 125 to 200 per day.

Q. 125 to 200 per day?

A. Yes.

Q. Have you any idea, Mr. Williams, or could you express an opinion as to the probable number of trains that would be handled at the Southern Pacific terminal if it were operated jointly by the Southern Pacific and Salt Lake at the expiration of 20 years or 30 years from this time?

A. Well, based—looking at Los Angeles and the transportation facilities offered us for suburban movement, and treating this S. P.-Salt Lake station as a steam line station which would handle very little suburban traffic, steam line suburban traffic, I can't conceive, under the present time tables and present population of Los Angeles, and looking forward to increasing the population, when you stop to consider that the trains that would use this station would be principally and practically all overland trains or through trains and that your city now and in the future is taken care of it will be with the Pacific Electric service so far as suburban service is concerned, I think it would be a

fond dream to think of handling 200 trains in the next 20 or 30 years, when, as I say, you could not hope to handle except overland or through trains, as the steam line trains of this city apparently will never be called upon to handle a large suburban service but will only be required to handle their through business. There will be very little local business.

Q. You say an estimate of 200 trains would be a fond dream?

A. That is my judgment.

Q. You are not indulging in any such dream?

A. No.

Q. What, in your judgment, will be the total number of trains that will be handled by these two lines at this depot, if they were consolidated, at the expiration of 20 or 30 years?

A. Well, they handle today 59 trains, and I can't believe it would more than double or that it would handle, say, 118 trains.

Commissioner DEVLIN. That is, 59 for the two companies?

A. Yes, today.

Commissioner DEVLIN. What is the S. P. alone at the Arcade today?

A. There is 15 inbound——

Mr. HALSTED. 30 for the Southern Pacific and 20 for the Salt Lake, Mr. Commissioner.

Mr. DURBROW. In its decision approving of the plan of the present Southern Pacific terminal facilities at Los Angeles, the Commission used this language, Mr. Williams:

"The structure to be erected under these plans will be efficient and ample to provide for the probable passenger traffic coming to and departing from a city several times the present size of Los Angeles." Do you subscribe to that statement?

* * * * * * *

A. Yes.

* * * * * * *

Mr. DURBROW. Well, it is identified now. Now, Mr. Williams, assuming that this fond dream should be realized and at the expiration of 20 or 30 years 200 trains would arrive and depart at that depot, could they be handled with the 12 tracks?

A. They could.

Q. Have you prepared a chart to show the possibility of that?

A. Yes.

Mr. DURBROW. I would like to have this marked Exhibit No. 30, I believe.

* * * * * * *

Mr. DURBROW. Now, will you please explain this chart which has been marked Exhibit No. 30?

A. Well, this shows——

Q. In the first place, may I ask you if, in preparing the statement, you have indulged the assumption, which I understand you to say is a violent assumption, that there would be 200 trains in and out of this depot at the expiration of 20 or 30 years?

A. Yes. I dislike to speak from that standpoint because it is so foreign to my judgment that there will be that many trains that I think we have gone to a very elaborate extreme in preparing that, but it was

prepared on that scale that, if possible, or if it was probable that we would have that many trains, a 12-track lay-out would take care of the business.

Commissioner DEVLIN. Let me ask you there, Mr. Williams, please, would, in your judgment, the 12 tracks take care of the trains of the Southern Pacific-Salt Lake and the Santa Fe for 20 years?

A. Mr. Commissioner, I would have to check up the time tables of the Santa Fe and also make some study as to the increase in their business, the same as I have for the Southern Pacific and the Salt Lake, if I would answer that properly. I would want to make some study of it.

Commissioner DEVLIN. I suppose, aside from train schedules, it would be a matter of detail for the operating men, but I suppose it would be a fair assumption there would be the same growth, of course, in the trains of the Santa Fe, that is, the same corresponding increase with reference to their present growth, as that applied to the Southern Pacific and the Salt Lake?

A. Absolutely, yes, sir.

Commissioner DEVLIN. So that it would be merely a matter of computation, I suppose?

A. Yes, sir, that would be all.

Commissioner DEVLIN. All right.

Mr. DURBROW. Now, Mr. Williams, in expressing the opinion as to the possibility and, as I understand it, the practicability of operating this number of trains in and out of the Southern Pacific facilities, have you taken into consideration any data which is contained in Mr. Sachse's report and have you

also taken into consideration the experience you have had in the operation of terminals?

A. I have. We find in Mr. Sachse's report a very fine chart showing the rush hour train traffic at Chicago passenger terminals.

Q. That is at page 337. Will you please state what that indicates to your mind?

A. Well, this shows on the Northwestern Railroad that, with a 16-track, with 16 station tracks and 6 supporting tracks they handle an average of 319 trains per day. In dropping down in the statement to the Dearborn Street station, if you will notice, they have only 9 station tracks with only 2 approach tracks, and they handle 154 trains per day. They did at the time this was gotten up, no doubt, by Mr. Sachse, and whether it has changed since then I don't know. They may have increased since then. Take the B. & O. station, they have 6 station tracks and 2 approach tracks, or 8 tracks, in their station, and they handle an average of 31 trains per day. I think the Dearborn Street station with 9 station tracks as compared to the 12 as proposed under the Salt Lake-Southern Pacific plan, shows that if at the Dearborn Street station today, with only 9 train tracks or station tracks, they are handling 154 trains per day, we certainly should have no trouble in handling 59 at our present station without increasing our facilities.

Q. Now, are you able to support your opinion also by the practical experience you have had in operating the Southern Pacific terminal at Oakland Pier?

A. Yes. At Oakland Pier we have 9 tracks, 3 receiving tracks and 6 outbound tracks. We handle today at Oakland Pier—or did when I left there and I think it is practically the same train service today—88 trains each 24 hours, and those trains are received on only 3 receiving tracks and depart on 6 departing tracks, or a total of 9 tracks in the station. Today, and they have for some time, been handling successfully 88 trains and more during the Shriner movement and a convention in San Francisco recently, and I think if we had a picture of that station as to the total number of trains in and out with 9 tracks to handle them on you would find quite a peak load there on the dates that the heavy business may be.

Q. Are there any conditions obtaining at Oakland Pier which would make it more difficult of operation, so far as the loss of time is concerned, in switching that terminal as compared to the Los Angeles terminal?

A. Yes, you can not compare the two stations in that respect for the reason that at Oakland Pier every outbound passenger train leaving Oakland Pier, in order to be placed in the station, has to cross over a network of electric tracks and we move on those suburban trains through the throat of the station daily, move 906 trains in every 24 hour period. Now, every coach train, every train that arrives at Oakland Pier that has to be taken to the coach yard, has to cross the throat of those electric tracks in getting to the coach yard, and every outbound train being backed down to the pier to leave, has to cross the throat of these electric lines, or series of electric tracks, before

it can be placed in the steam part of the station, steam track part of the station.

Q. Mr. Williams, will you please make a comparison of the operating costs which would be necessarily incurred by the three lines in using the Plaza terminal as compared with the use of the Southern Pacific terminal by the same 3 lines?

A. Well, I have made no figures to show the comparison as to costs, but simply using my own experience and passing upon the question through my own judgment, I would say that with the plaza site scheme before us, confiscating our present River Station freight yard where we segregate and handle all of our merchandise and all of our industrial business, and when you confiscate this yard and in your proposed plans lay out a new yard some two and a quarter miles beyond the present River Station freight yard, the extra expense you are going to be put to to haul that business to the outer yards and segregate it there and then return it to the city and place it at the industries where it is consigned, that is going to run into an awful lot of money in additional operating expenses. It means additional switch engines. It can't be handled in any other way. It is going to take more crews, more power. When you take away a facilities that is right at the door of your industries and the door of your freight sheds, then move it out in the country, and then have to return this business to the industries that are not moving when you move your freight sheds, it is going to require additional expense to handle that business.

Q. But it is true, as contended in the Sachse report that, by the operation of the joint coach yard at the point indicated in the Sachse plan, which is the Southern Pacific freight yard or specification yard now, and by the operation of a joint roundhouse at the Southern Pacific site, there would be some economy in purely operating expenses?

A. True.

Q. And I want to ask you whether that saving in operating expense would be compensated and overcome by the additional expense of operating the freight of the different carriers?

A. In my judgment it would.

* * * * * * *

Commissioner EDGERTON. This blueprint will be received, headed, "12 tracks for arriving and departing passenger trains", will be marked

EXHIBIT 30

of the Southern Pacific-Salt Lake.

(Tr. 2004-2017.)

Mr. DURBROW. Those 59 trains which are shown here on Exhibit No. 29 shows the number of trains now operated in and out by the Salt Lake and Southern Pacific and takes into consideration the average extra trains that are operated, does it not?

A. No. This is made up to show the actual number of trains as per present working time tables on both lines.

Mr. SIMONS. Shown on the time card?

A. That is right.

(Tr. 2022.)

W. H. COMSTOCK,

a witness called in behalf of the Los Angeles & Salt Lake Railroad Company, being first duly sworn, testified as follows:

Direct Examination.

Mr. HALSTED. Mr. Comstock, what is your position with the Salt Lake Company?

A. General manager.

Q. How long have you been general manager?

A. Since March 1st, and, prior to that, assistant general manager under Federal control.

Q. That is, you have been general manager for the railroad company since the return of the properties to the owners?

A. Yes.

Q. And before that, during Federal control, what was your position?

A. I was assistant general manager from August, 1918; prior to that time acting general manager after Mr. Nutt.

Q. While you were acting general manager and assistant general manager during Federal control, you had charge of the operations on the Salt Lake road?

A. I did.

Q. And what other position have you occupied with the company?

A. Well, prior to that I had been secretary and assistant to the second vice-president for a period of 14 years, and, prior to that, trainmaster and chief clerk and superintendent.

Q. What experience have you had in operating railroads and in connection with the operation on railroads?

A. Oh, about 25 years.

Q. What duties have you discharged in that time, and in what capacities. Just give your experience as a railroad man.

A. Well, I started in 1892 with the Delaware & Hudson in the traffic department, and then came to the Atlantic & Pacific in the auditor's office, and then to the Santa Fe in Prescott and Phoenix, and the Phoenix in traffic, that was up to 1897. Then I went back to the Santa Fe main line in the operating department and have been in the operating department ever since.

Q. What—where was the Santa Fe line located with which you were familiar?

A. My headquarters were in Gallup, and Winslow.

Q. And how long were you assistant to the superintendent of the Los Angeles Division of the Salt Lake?

A. About 3 years.

Q. You are familiar with the operations of passenger trains in and out of stations, are you not?

A. Yes, sir.

Q. The length of time required for loading such trains and discharging passengers and baggage and so forth from such trains?

A. I am.

Q. Did you hear the testimony of Mr. Williams respecting the capacity of the Arcade depot?

A. I did.

Q. Let me finish—respecting particularly the capacity of the facilities there for handling the Salt Lake-

Southern Pacific business, if it was used as a joint station?

A. I did.

Q. Just state now, generally, what your views are respecting the conditions there. Are they different or the same as Mr. Williams'? We might shorten it by pointing out wherein you differ.

A. I think Mr. Williams is very conservative, in connection with our trains, which are shown on that chart as 20, you will notice.

Q. That is Exhibit No. ——

Mr. DURBROW. 29.

Mr. HALSTED. 29.

The WITNESS. If you will note 14 shown as local and 6 as through. Now it is my opinion that our train service will decrease rather than increase in the next few years, for the reason that those local trains serve the shipyards at San Pedro, and I don't think, even though that shipyard business continues permanently, I don't think the steam lines are going to continue handling it. I think the electric line will handle it eventually. Now we get up to 200 trains a day in the Arcade. I would like to bring out my views in the matter, that you can not bring 200 trains into this city, without enlarging your steam lines that bring them in. You have got to have more steam lines, or you have got to have double or treble or four track lines.

Q. That is, if they come in on one line?

A. All of them, the Santa Fe and the S. P. and the Salt Lake. Now I am an optimist on Los Angeles, but

I don't belong to Billy Garland's "Million in 1920 Club" and when Mr. Gibbon speaks of 2,000,000 people here 20 years from now, I think it is a dream.

Q. You have examined this chart, have you not?

A. That is 200 if——

Q. Exhibit 30. Now the train movement shown there is 200 trains a day?

A. Yes. I believe the Arcade can handle it, but I don't believe you can get them in and out on the steam roads.

Q. In other words, you think, though, that the time allowed for trains departing and the time allowed for trains to come in and be unloaded and taken out, as shown on this exhibit 30, is ample, do you?

A. Absolutely, he has allowed 12 minutes for receiving and 30 minutes for departing, which I think is ample. I think it could be done in considerably less time.

Q. So you do think that the facilities at the Arcade station are adapted to handling 200 trains a day if it was necessary to do so?

A. I do.

Q. Now, referring again to the number of trains on the Salt Lake road entering and departing from the city at this time, you say there are 20?

A. That is dated as of January 1st.

Q. Well, that is correct. I am just leading up to another question.

A. Yes.

Q. Is that a greater or less number of trains than we had a year or two ago?

A. That is greater than two years ago before the ship business started.

Q. Is it greater or less than the total number of trains we ever operated?

A. Well, before the electric lines got into Long Beach I would say that we had more than that number at that time.

Q. In other words, Mr. Comstock, the local business of the Salt Lake road is diminishing?

A. Absolutely.

Q. And the number of local trains is decreasing?

A. Our local business had been taken away from us entirely until the shipyards started at East San Pedro during the war period.

Commissioner EDGERTON. May I ask him a question: You have said, as I understand, that the present main line capacity of the railroads, total, is not sufficient to accommodate 200 trains a day in the Arcade station?

A. Yes, the total main line capacity of the three steam lines.

Commissioner EDGERTON. Now, what is the present limit to the main line capacity of the existing roads?

A. That is a pretty hard question, but I would say with the single track line, 20 trains a day is a pretty good business.

Commissioner EDGERTON. How much?

A. 20 to 25 trains a day is pretty good business.

Commissioner EDGERTON. For each road?

A. Yes.

Mr. HALSTED. You mean passenger business?

A. Yes, passenger business.

Q. In addition to freight?

A. We are talking about the passenger business at the Arcade.

Commissioner EDGERTON. That is less than the Southern Pacific now handle, is it not?

A. They have the three lines, the El Paso and the San Joaquin and the Valley.

Commissioner EDGERTON. You are speaking of one main line track?

A. Yes, sir.

Commissioner EDGERTON. I see, now, you suggested that, to increase the number of trains above what you now say would be 20 per day, the limit, double tracking of—doubling or tripling or quadrupling the trackage would have to occur?

A. Yes.

Commissioner EDGERTON. What do you mean, on the entire railroad?

A. Yes, in order to get them in and out.

Commissioner EDGERTON. Clear back to the eastern terminals?

A. Eventually, I think.

(Tr. 2036-2042.)

T. H. WILLIAMS, recalled

Direct Examination (resumed).

Mr. DURBROW. Will you please state whether the exhibit which shows the number of trains operated into and out of the Southern Pacific depot by the Salt Lake and Southern Pacific includes extra trains?

A. It does.

Q. And extra sections.

A. It does. It is shown right on the face of the chart as the extra trains, all marked up on there. It is not trains every day.

(Tr. 2052.)

PAUL SHOUP,

a witness called on behalf of Southern Pacific Company and Pacific Electric Railway Company, being first duly sworn, testified as follows:

Direct Examination.

Mr. DURBROW. For the purposes of the record, Mr. Shoup, will you please state your official connection with any of the defendants in this hearing, any of the carriers.

A. Vice-president of the Southern Pacific Company, president and director of the Pacific Electric Railway Company.

Q. You are familiar with the terminal situation at Los Angeles?

A. I am.

Q. And with the different plans which have been proposed by the several parties here at these hearings?

A. I am.

Q. Will you state please whether, in your opinion, it is practicable or necessary to establish a depot at the plaza?

A. I do not think it is necessary to establish a depot at the plaza.

Q. And will you please state whether, in your opinion, it is more practicable to establish a depot at the plaza or at the Southern Pacific site, taking into consideration all the different factors which have been spoken of in these proceedings?

A. Very much more practicable to establish a station at the Southern Pacific site.

Q. Will you please state the reasons for your opinion.

Mr. SIMONS. Union station?

Mr. DURBROW. Yes.

Commissioner EDGERTON. Including the Santa Fe?

Mr. SIMONS. Union station, you mean?

A. I had in mind the Southern Pacific-Salt Lake plan, including the Santa Fe; but including the elimination, any necessary elimination, of grade crossings.

Commissioner EDGERTON. Of course, again you are not comparing like things, I suggest, Mr. Shoup.

A. That is true.

Mr. DURBROW. But, Mr. Shoup will give you the reasons and fully explain the answer, I believe.

Commissioner EDGERTON. All right.

A. There is no objection, however, to my answer including the Santa Fe in so far as comparison is concerned.

Commissioner EDGERTON. That is, Mr. Shoup, you mean——

A. If the Santa Fe is to be included in the union terminal, then it is much more practicable to have it included in a union terminal of the Southern Pacific and Salt Lake under the Southern Pacific-Salt Lake

plan at the Southern Pacific site rather than to have the three roads joined in a terminal at the plaza. In arriving at this conclusion probably the desirable way of making the necessary comparison is to follow the order given in the report of the Commission's engineers. You will find on page 27, I think—no, it is 28—18 principal reasons listed in the order of their importance, with brief comparisons—I am using the language of the report in saying "The order of their importance", not my own. And on page 388, I think it is, the comparative or relative importance of each one of these factors is set forth, according to the viewpoint of the engineers making the report. I might say in that connection that, from my viewpoint, these 18 reasons on pages 28 and 29, which are extended to 21 factors on pages 388 and 389, are not comprehensive nor do I agree with the relative importance attached to each by the engineers making the report.

Dealing now with the 18 reasons on pages 28 and 29, obvious No. 4, No. 9, No. 12 and No. 18 are not reasons in favor of the plaza site, nor do I presume that, in listing these statements, that the engineers intended they should be so set forth, rather intending that all of the various factors, as they saw them, should have a place in this report. Because No. 4 states that the plaza plan is nearly equal to the Southern Pacific plan, in so far as the interference with switching is concerned, and, therefore, is an argument in favor of the Southern Pacific site, and not the plaza site. No. 9 states that the plaza site is nearly as good as the Southern Pacific site, therefore comes within the same

category as No. 4. No. 12 states that, so far as convenience to hotel business and shopping districts is concerned, the plaza site is slightly less convenient than the Southern Pacific site, therefore is to be eliminated as an argument in favor of the plaza site. No. 18 states that, with respect to the segregation of freight and passenger routes, that this is best accomplished by the Southern Pacific plan, but the plaza plan is not much inferior, thus listing 18 with the arguments in favor of the Southern Pacific site. No. 6, as to a union freight station, which is incidental to these plans as set forth by the Commission, is stated to be equal as to each between the Southern Pacific—I might read the language which is "The plaza plan is equal to the southern Pacific plan and both are better than the Santa Fe plan".

Dealing with the other items, where my conclusions may agree or differ from those of the engineers making the report—we are, I will say, of one mind as to these items I have referred to here. First the item as to size and shape of site, in which it is stated that the plaza site is much wider and longer than the Southern Pacific Station site, which is true. I think, however, that in considering any question of that kind, immediately comes up two other questions, one of the necessity for a wider and longer site, and, indeed, that is inferred here because it speaks of the Santa Fe site as being too large, in item 1 on page 28, and, second,—I am not naming these in the order of their importance, but both as important factors, either one being too large overthrowing any of the other—no, that is not true;

the financial end would overthrow any advantage of a larger site in the end. In other words, if you cannot provide the money, why, you would have to get along with what you had, but both these factors are very important and it is necessary, therefore, to consider the question of expenditures of money necessary to secure both sites for this purpose, speaking now of new money and, in making that comparison, you have in mind quite —what might be done at one site where the money is not spent, if it were put on the same financial basis as the other. The plaza site shown in red here, according to the figures that have been quoted in this hearing, occupies 65 acres of ground, and, as also quoted in this report—the plaza site and the approaches—perhaps I should say requires the acquisition of some 65 acres of privately owned property, also the closing of 19½ acres of streets. It is not plain to me just where the plaza comes in in the stated areas, but, in any event, the plan contemplates the taking of a very large area of privately owned land to provide a site. That, of course, involves a very considerable expense, not only for the purchase of the land, but also for the purchase of the improvements. In some places in this report the tables speak of the land and in some both the land and the improvements thereon.

On page 32 of the report reference is made to the ownership of 65 acres of land with a given value of $3,905,122, which would be necessary to acquire. The engineering Conference placed the value of this land with the improvements at $5,876,657. Table C-2, page 561 of the report, the original figures of the engineers

gives a value to the land and improvements of $4,834,-972, of which the improvements are valued at $1,048,194. It is therefore proposed, in connection with the plaza, not only to purchase the land, but, necessarily, to destroy improvements valued somewhere between one million and two millions of dollars, which, of course, can be determined only through process of condemnation, or direct purchase. We have, therefore, when it comes to spending money, to face a prospect, using the Conference figures, of paying out some $5,876,000 for privately owned land, which includes $180,000 for property damage, and that factor we do not face in connection with the union terminal at the Southern Pacific site, or in very small degree; so far as the site is concerned, not at all; from the viewpoint of our plan, as I recollect it now, but as revised by Mr. Sachse, it would be necessary to include some small parts of the land in that block bounded there at the corner of Central and 6th Street. In order, therefore, to make the plans comparable as to the size and shape, we should consider what the expenditure of some large sum of money, in this case some $5,000,000 or more, applied to the Southern Pacific site, would effect in putting it on an equality referred to the engineers' report, putting it on equality with the plaza site referred to the engineers' report. I don't intend to follow that any further, for it is obvious—I mean as to the detail, unless you want me to—but it is obvious if you close 19½ acres of important streets in the neighborhood of the Southern Pacific station, very largely the same—one of the same important streets that you are closing in

connection with the plaza site, that is, Alameda Street, and spend four or five million dollars in that neighborhood, you can get almost any kind of an acceptable site for a station that you might desire.

Now, as to the question of practicability and necessity as applied to these two sites, it does not seem to me necessary to any more than refer to the testimony and to the report made by the engineers to show that there is not any need of spending this five or six million dollars in either location. The statement in the engineers' report is to the effect that, on page 289, the Southern Pacific site is adequate for 20 years, as it will, in the views of the engineers of the Commission, accommodate 140 trains, which is the number estimated at the end of 20 years. On page 344, that it is large enough for some time to come; and on page 337, that it is sufficient for 140 trains in the future, the reference to the 140 trains being based on the 20 year estimate. And it seems to me it has been conclusively shown that the site is adequate to handle expeditiously a very much larger number of trains than 140.

The interest, depending upon the rate, doubles itself in a short time, 8, 9 or 10 years. Money costs a good deal now. The railroads are paying 7½ per cent, those that have good credit. You start out then with the sum of $1 now and it becomes $2 on an interest basis, we will say, in 10 years, and in 20 years, it becomes $4. Any unnecessary investment at this time, supposing you are going to issue bonds for a period of years and they must be sold at present prices, any unnecessary invest-

ment that is not yielding anything to the railroads or any necessary convenience to the public I will leave out the aesthetic feature for the time being—means about $4 invested 20 years hence, aside from the possibility that there will be such a change in 20 years that it is not desirable, will have proven not to have been desirable to make this large expenditure at either one of these sites of five or six million dollars. Therefore, I reach the conclusion, referring now to page 28, that when it comes to the size and shape of the site, taking into consideration the financial element involved and the practicability of the Southern Pacific site to take care of the situation for 20 years to come, the plaza site is very inferior to the Southern Pacific-Salt Lake-Pacific Electric site; and that, as I said, is my conclusion whether the plan of the Southern Pacific-Salt Lake-Pacific Electric, under which only two steam railroads enter that depot, is followed or whether all three of the roads enter that station.

Item second here, to which a good deal of discussion and attention was given the first day, page 28, as to the greater architectural and esthetic possibilities of the plaze site, it is stated that civic pride and advertising value of the feature are of particular significance, and at the plaza a beautiful site can be set off at the station with the least damage to business, and while in this condensed statement no reference is made, elsewhere in the report there is reference made, further reference made to artistic and esthetic possibilities. I say artistic rather than architectural. I think the architectural possibilities perhaps involve a wider dis-

cussion than is intended, since, obviously, we would get back to the matter of money and you can build a 2 or 3 or 4 or 5 or 10 million dollar station at either place.

Now, as to the esthetic possibilities, I think the situation is fairly set forth in this report where, on page 288, it is stated that the Southern Pacific site compares not unfavorably with the other locations. I will read from the report:

> "The location compares not unfavorably with other locations when viewed from the esthetic standpoint. The station is at the end of one of the main streets, and while there is no plaza or park providing a setting for the building, the construction of such a plaza is not impossible. The buildings in this vicinity present, perhaps, a little better appearance than those in the vicinity of either the Santa Fe or the plaza site."

I do not, however, attach any such importance as do the engineers in their report to the esthetic, architectural or artistic features of this situation, in so far as the railroad companies are concerned, at least. If the public has money to spend in that direction without it being charged to the railroads, as a civic matter, that, of course, is another question entirely and with which we have nothing to do. So far as I know, in the construction of union stations, the creation of at plaza in front of any one of them has not been a feature, though I want to say my knowledge is not claimed to be comprehensive on that question. But thinking of Boston and the New York Central station, the Penn-

sylvania station and the St. Louis station, and so on, why, plazas are not features. There is, however, an argument in favor of the plaza at the plaza site which has no corresponding argument at the Southern Pacific site——

Commissioner EDGERTON. Before you leave that question, Mr. Shoup, what purpose or motive actuates, we will say, the Santa Fe in creating garden plots about their stations, and I think the Southern Pacific does in some cases, too, doesn't it?

A. Yes, it does.

Commissioner EDGERTON. What leads them to do that?

A. To make the approach to the station and the station itself more attractive.

Commissioner EDGERTON. Yes, that might be called as wholly esthetic.

A. Wholly esthetic, I should think, yes. In other words, they take land which would otherwise be barren or land that would not be used—it is a part of their grounds, not purchasing land for this purpose so far as I know—and beautify it. And I would not have it understood that, for my part, I do not think stations should be artistic or architecturally attractive. What I have said, however, is that I don't attach the importance to that, and that is also true because of the surroundings in this particular case, either at the Southern Pacific or the plaza, that is given to it in this report. It is given a very much greater value by the engineers in comparsion with such questions as taking

the interurban trains off the streets that I would give to it—as a matter of personal view.

But the argument in favor of a plaza site at the north end of town, of a plaza, rather, at the plaze site, is accentuated, at least, by the fact they are going to destroy, in creating this plaza terminal, an existing park which, assuming that the people up there use, as they do use, very largely the present plaza, should be replaced, not altogether as a matter of esthetic—what shall I say, adjunct to the station? But because there will be a demand from those people for a resting place. I just came by there and there are, I suppose, 100 people in there now enjoying that plaza, and at times there are a very great many more.

It is also stated in this report that the surroundings—I am not quoting the exact language—of the plaza are not quite so attractive as they are at the Southern Pacific, in other words, as a setting for this monumental gateway. I agree with that.

The question, then, of the buildings themselves comes up for what value it might have, and I believe that the Southern Pacific station is attractive architecturally and esthetically. It was built under the plans of an architect who has put up—who has made the plans for a number of most attractive buildings in this town and who is very well known for his ability as an architect, and, incidentally is also less widely known, but none the less favorably known as an artist, Mr. John Parkinson, whether we would have a more artistic station at the plaza, one architecturally superior, would depend both upon the architect and the amount of money to

be spent, and the conclusions reached by those who might control the situation. So far as the figures given here are concerned, as to the money that would be available under this plan for a station building at the plaza, obviously it is impossible to create any such station as exists at Washington, D. C., even reduced to the two-thirds of the size, as suggested in the report—perhaps not two-thirds of the size, two-thirds of one dimension. The station at Washington, I haven't the figures for the station building itself, but it was a very expensive construction, and, at that time—I will refer you to the California Outlook, not as conclusive in this matter, but I have some recollection of my own also, as of November 4, 1911, showing the station at Washington and quoting the cost at twenty millions of dollars. Obviously that would mean at this time something like forty millions of dollars. But I assume that it includes much more than the station building. Probably the lands and the tracks.

Commissioner EDGERTON. There was a contribution by the federal government, was there not, Mr. Shoup?

A. Yes, I think there was. It was done under the direction of the District of Columbia or the federal authorities there acting in—no, I am not sure about the District of Columbia, but you are right about the federal government having a voice in the matter.

The only point I am making, and I don't think that the engineers intended that there should be any comparison between this station that they propose, and the Washington station, except just as a matter of a suggested model, is that if you are going to use the Wash-

ington station in making the comparison, then it is quite desirable to find out what the Washington station would cost now, reduced in size as suggested, a subject that can be very readily determined, of course, by process of estimate.

I would, therefore, conclude, having in mind the report itself, and, to be fair, having in mind what was stated in a quotation from Mr. Bion J. Arnold, as to the possibilities of the north end, that it is not proper to conclude, on the basis of the data furnished in this report, and the limitation placed upon the expenditure, without knowledge of definite plans, that the result of the work at the plaza would be any more artistic or architecturally acceptable, than is the present station, which is a handsome station, at the Southern Pacific site.

The third argument offered here is the ultimate rapid transit, page 28. To the feature that the plaza site is now on a more probable axis of the ultimate rapid transit system, and, therefore, more convenient than either the Southern Pacific or the Santa Fe site, with the concluding statement that more interurban passengers would pass the Southern Pacific site than the Santa Fe site. That involves—the word "ultimate", I appreciate, has large possibilities—that involves, necessarily, certain assumptions with which I don't agree. In the first place, as to the number of interurban passengers passing either site, I believe the Southern Pacific plan or—together with the use of the Southern Pacific site—would mean that the greater number of passengers, comparing the two sites, would

be by the Southern Pacific, for the reason that not only all of the passengers of the northern division would pass the Southern Pacific site, but also all those of the southern division would be carried within 800 feet of the station entrance. Now when we come to dealing with the southern division, so far as the plaza site is concerned, there is no through service. That plan contemplates the construction of our proposed elevated road to the present terminal of the Southern Pacific at 6th and Main Street, as I understand it, and there the passengers must all change cars if they are going to points on the northern division, there being no physical connection. Now, aside from the fact that, obviously, they would not care to continue the journey where—well, this may not be quite accurate, say two miles further, they would not have any through service by that site at all. Then we come to the question of "ultimate". A thing has no value unless it is going to be realized within a reasonable length of time, and, so far as the rapid transit system is concerned, the plaza site must depend upon that reasonable realization. The obstacles we find in the road is that the city cannot grant any franchise for a subway on Main Street. I am not going to repeat any testimony, any more than I can help. Second it is a very expensive subway to be built, costing six and a half millions; third, it is some 40 feet below the surface, and finally, when the city does build any subways, whether east and west or—as was suggested yesterday—or north and south, obviously it is going to spend some money for that purpose to relieve the surface of the street, and

the traffic thereon, and the interurban cars are not one of the material burdens on the surface of Spring or Broadway or even Main at this time. We can reduce the number of interurban cars on Main Street at any time that the Railroad Commission or the city or the public desire. We are running our Pasadena and Alhambra cars around that way as a matter of public convenience, running them one way that way they run on a loop, but they are not a material factor—well, let me say a very material factor—in any congested situation on Main Street, and, obviously, to create a subway only for interurban cars, necessitating the city spending six and a half million dollars, since we cannot spend it, even if we desire to do so, and we don't, would be to put a burden upon the city at least of supplying money, and not give the streets surface relief, which will be the chief motive for the city in building a subway at any time, and when I speak of street service relief, I mean by that accelerating the movement of the public through the streets by giving them a—substantially—a double deck street. The charter, our counsel tells me, does not even permit the city to lease such a subway to the Pacific Electric, so you have a long period of uncertainty ahead. The charter of this would have to be amended, the question of finance gone into, and, from my point of view, that is not a probability. Therefore, I cannot attach very much importance to the value of the plaza as located to an ultimate rapid transit site. And that is especially true when we consider that, in so far as inter-

urban passengers are concerned, they can very promptly be taken from the surface of the streets, and the trains that transport them, for both the southern and eastern divisions—northern division—under the Southern Pacific Plan.

As to item 5 the "least train, coach equipment and light engine mileage", it is stated the plaza site is superior to the other sites, largely due to location at a more central point. The operating people are better qualified than myself to deal with that. Obviously, however, by the expenditure of money, you can create facilities adjacent to any of these depot sites that will reduce the mileage for the locomotives and the coach equipment and the trains, so, just as soon as we begin discussing that, we get into the question of cost, because that question is involved in the location at the plaza. We also get into the question of the disturbance of other facilities whereby the cost may be enhanced in some other direction in connection with the freight service. Dealing with the element of cost, however, alone, it is stated in this report, on page 290, that to use the Southern Pacific site, basing the figures on mileage alone, would mean an operating cost of $81,000 per year more than at the plaza site. $81,000 a year would pay interest, at 7 per cent, on say $1,150,000. But when we come to the expense side and find that, as shown by comparison of these two plans in a financial way, and I am referring now to the statement submitted this morning, that the passenger terminals, approaches and coach yards in the Southern Pacific plan

involve an expenditure of four millions of dollars and, in the plaza plan, thirteen millions of dollars.

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The WITNESS. It is obvious that there is going to be a fixed charge that is going to be heavy, comparing that to any saving in operating expenses. Further, the maintenance would be very considerably greater—I am not speaking of train operations, but the maintenance of the plaza site, all of these extra expenditures, maintenance and depreciation will be much greater than in connection with the Southern Pacific site. So I don't agree with the conclusion reached as to item 5, if it is taken in connection with the attendant expenses.

Commissioner EDGERTON. Mr. Shoup, in some degree show the relative weight you give to the cost of change of location in a station from the Arcade to some other—let me ask you this question: Compare it with other factors, let me ask you this question, suppose you could forget the question of cost, and suppose you were asked to select a site for a union passenger terminal, where would you put it?

A. I don't know. If I could forget the question of cost?

Commissioner EDGERTON. Yes.

A. Having in mind what might be available?

Commissioner EDGERTON. Yes, I am asking you—well, I don't know how far you are leading me in that question. Here is what I want you to do——

A. I cannot forget the element of cost.

Commissioner EDGERTON. I know, but I want to see if we can determine how much you are influenced by the

fact that the Arcade is already where it is, that is what I want to get at. Suppose the Arcade was not there, perhaps we can get at it that way.

A. How can I suppose that the Arcade is not there?

Commissioner EDGERTON. Well then, we have got——

A. Right away I start with a premise that I cannot assume.

Commissioner EDGERTON. Well, let me put it in this form Mr. Shoup——

A. There is a building there and tracks there that will accommodate the business for the next 30 years. We all admit that.

Commissioner EDGERTON. All right. Is there—assumming now the present location of the railroads, with such changes as you suggest would be proper to eliminate grade crossings, and so forth, is there an ideal site for a union terminal passenger station?

A. I can suggest so many that are better than either one of these, that I hesitate to start, but I would suggest one which is practical—that is practicable, that would not involve any more money than the plaza site, and would be far more acceptable to the people of Los Angeles in connection with the interurban traffic and the people outside, and all the strangers that come to our city, if I could. Will that answer the question?

Commissioner EDGERTON. If you will say it is an ideal site.

A. I am not saying it is an ideal site, but we have one, and that is to enlarge the Pacific Electric right of way from right up—you see it marked there, up to the Pacific Electric station from Central Avenue, 90

per cent purchased, and part of the way is wide enough for 4 tracks, and all the way for 2 tracks, you see, lined with tracks on there beyond Los Angeles and 6th, the Pacific Electric owns most of that block in the rear. It is a station that can be very materially enlarged, and which has, I think, as much waiting room as is proposed for this station at the plaza station. I say materially enlarged, all you have to do is to take out those tracks that now run through the building, and you can build it back as far as you like, and it will not take any sixteen millions of dollars excess of the plaza plan for it; as I understand it, the engineers have concluded that is the excess of the plaza plan over the Southern Pacific plan. It won't take any $16,000,000 to provide a station.

Commissioner EDGERTON. You think that would be better than the Arcade even?

A. I think that would be better than the Arcade.

Commissioner EDGERTON. For all the railroads?

A. For all of the railroads.

Commissioner EDGERTON. Including the Pacific Electric?

A. Including the Pacific Electric—runs in there now.

Commissioner EDGERTON. And the Santa Fe?

A. And it is a very satisfactory location. I am not suggesting that that $16,000,000 be spent—I don't know what sum would be, but I know in a general way it would not take any $16,000,000. I am not suggesting that that be spent for that purpose, but as long as you are asking for the practicable solution, I would just like to make that one comparison. One word more

about item 5: As I understand the plaza plan, it means using the classification yards as a coach yard and thereby takes credit for a short mileage in connection with the movements to and from the coach yard, but it in turn involves removing the classification yard to a point 2 or 3 miles farther north and that, of course, would increase the expense of switching from that yard down into the industrial district.

Now, as to item 6, I pass because there is equality there under the engineers' report.

No. 7, grade crossing separation, it states that:

"No elevated railway structures are necessary in up-town district or awkward subway and crossings in a very important thoroughfare, as with the Southern Pacific plan. The plaza plan is nearly equal to the Santa Fe plan." That argument is not clear to me because the only elevated structure in the business district that I know of that is contemplated in connection with the Southern Pacific-Salt Lake plan is that of the Pacific Electric from 6th and Main down to the Southern Pacific station and on down to and across the river and also down to 14th Street. And that particular elevated is recommended in connection with both the Plaza plan and the Southern Pacific plan.

Mr. DURBROW. You mean Mr. Sachse's Southern Pacific plan?

A. Yes. It is recommended in connection with both plans and would be there under any plan. I think reference to page 118 of the report, "We also recommend that the Pacific Electric continue the present

elevated structure at the rear of its Main Street station, elevating the Long Beach line to 14th Street"—that is in the chapter on electric transportation. I have nothing to say about the awkward situation at—which is alluded to, anyway, as awkward—"Awkward subway and crossings in that very important thoroughfare." I suppose that is 6th and Alameda. I don't know as to the importance of that. I have been down and looked over the ground and looked over the plan in a very general way and it does not look to me like the traffic on Alameda would be at all obstructed. Of course, you might follow the plan that has been suggested up here (indicating on map), by closing 6th Street, like you close Macy Street, for example, and you would get rid of that awkward situation. But I don't think it is a matter of importance. I am, therefore, unable, in connection with item 7, to reach the conclusion that is reached by the engineers, that this is an argument of any importance in connection with the plaza plan, because, first, we have the same elevated road and, incidentally, that elevated road so far has not proved itself much of a nuisance. We have a ballasted deck there and it is not noisy. And, second, as I said, if the crossing at 6th and Alameda is of any consequence it can be disposed of the same way that similar difficulties have been disposed of at the plaza.

Eighth is the accessibility by street car lines. "60 per cent of the passengers use the street cars. With the plaza plan more are accommodated without transfer than at the Southern Pacific or the Santa Fe

sites. In this respect the Southern Pacific site is more convenient than the Santa Fe site." When it comes to the question of accessibility I think the element of time is of as great importance as the element of transfers, though it is not dealt with here, at least in this condensed statement. The service at the Southern Pacific station is, I think, a very satisfactory service with the exception that possibly we made a mistake in not having the Pacific Electric cars run down into the south end of the Southern Pacific grounds as was at first proposed, because passengers have to cross the street. Nevertheless, the station has both Pacific Electric and Los Angeles Railway service. There are two-thirds as many cars of the Los Angeles Railway pass that station as run on Main Street. The Pacific Electric street car service in the rush hours is every 5 minutes. Passengers reach the Hollywood district with one transfer which, incidentally, they could not do from the plaza station. It would require two transfers to the Hollywood district and the Hollywood district is a very important part of the town. Unless there was some re-routing of the town, which would involve putting in another curve at 6th and Main Street—and I want somebody else to suggest that, for I remember the last discussion on that subject.

Now, according to the report of the Commission engineers on page 278 it takes 30 per cent longer time, that is, 8½ minutes as against 11½, to reach the center of town at 7th and Broadway.

Commissioner DEVLIN. Longer from the plaza?

A. I mean longer from the plaza, yes. And the same, I believe, or substantially the same, to 5th and Broadway. It further states that it takes longer by street car to reach 7th and Figueroa from the Southern Pacific station than it does from the plaza. I don't know just how that calculation is made, but I would call attention to the fact that there is a direct Pacific Electric car line up 6th Street and that same neighborhood, which will give a much quicker service than is evidently contemplated under this computation and it will make the Southern Pacific site superior to the plaza site. The distance to 5th and Spring or 5th and Broadway or 7th and Spring or 7th and Broadway is about 20 per cent greater from the plaza than it is from the Southern Pacific station. I am quoting the report. There is also this further consideration, that 6th Street and 5th Street, from Main to the Southern Pacific station rather, are very much freer from obstruction than are the streets that lead to the plaza from the center of town. Any of you who have had occasion to use automobiles know that in going to and from various localities. And in that connection I would refer to item 13, to save time, on page 29, where it is stated that the plaza site, with respect to automobile operation is superior to the Southern Pacific site from all points except the business district. I think there is a reference somewhere in the report as to the amount of traffic, proportion of traffic, between the business district and the stations, but I haven't that in mind. However, I am using the figures now on page 278 in the engineers' report and it will be observed we will get

to 7th and Broadway, estimated it would take about two thirds more time by a slow operator.—And I will say I haven't any use for the other kind, so I will confine myself to that—from the plaza site than it would to the Southern Pacific site, and 50 per cent more time to 7th and Figueroa. Now, the center of population of Los Angeles some 3 or 4 years ago—I had a check made for our own use—it was found to be then somewhere in the neighborhood of 10th and Broadway. Since that time it has moved farther south and farther west. But if you can get by automobile to 7th and Figueroa in one-third less time from the Southern Pacific station than you can from the plaza site, obviously you can get to the rest of the town in less time; therefore I think the conclusion reached in item 13 as to the accessibility by automobiles is in error, since the bulk of the population—since the business district lies between the bulk of the population and the plaza, and this, I think, would, in connection with the greater accessibility to the business district, make the conclusion in favor of the Southern Pacific as a site.

As to item 10, operation of yard and coach yard, I presume this is gone into by—has been gone into by the operating men and the engineers. The Southern Pacific site, however, alluded to on page 28 as being the worst because the coach yard is distant, is perhaps putting the Southern Pacific in a little unfavorable light not wholly deserved. The site will be right across the river from the station, and the coach yard movement here would be from some place in this red area (indicating on map) out into this area here (indicat-

ing). But I said any consideration of that kind has to be measured by the investment that is necessary to secure it. When we come to the great question of operating expenses against interest on the investment with no other gain, why, then the result should be measured accordingly.

Property values, No. 11. It is stated that, "Considering ultimate appreciation and neglecting immediate disturbances, the plaza plan is far superior and the Southern Pacific plan is far better than the Santa Fe plan. This is of advantage to the city in the restoration of depreciated property values." Some weight might be given to the idea that if a public utility was situated in some locality and property values have been created there subsequent to its location, but even that has a very, very slight bearing, is a very slight matter, compared with the other needs of the situation that would be controlling. But it is very difficult for me to gather, for me to understand, why railway companies should be called upon to make expenditures for the purpose of restoring property values from which the rest of the city has manifestly—that is not putting it in very good English—to property from which the rest of the city has manifestly run away or it would not be depreciated.

Commissioner EDGERTON. Mr. Shoup, if appreciation of property values surrounding the new site would be disregarded, should you not disregard in the same way the depreciation of property values as to the old site?

A. Oh, yes. I attach no weight to either. But if anybody has a claim is rather the fellow who has

created his property value, made his investment on the basis of something being there, rather than the fellow asking for the investment to be made to restore his holdings that perhaps he and his neighbors have failed to appreciate the value of the property. So I can't—maybe I don't see this clearly, but I certainly can't attach any value to that suggestion.

Commissioner DEVLIN. Is that suggested in any fashion in the report? You don't mean that states that in the report, do you?

Mr. SHOUP. Oh yes, right here, page 28, property values. "Considering ultimate appreciation and neglecting immediate disturbances, the plaza plan is far superior and the Southern Pacific plan is far better than the Santa Fe plan. The ultimate appreciation with the station at the plaza site and a union freight station at the Santa Fe site is estimated at over $8,000,000. This is of advantage to the city in the restoration of depreciated property values."

Commissioner DEVLIN. Yes, I see. As a matter of fact, I didn't recall that particular thing. Of course, the report, however, is directed to the advantage to the city. But you feel it carries with it the individual owner as well?

A. Well, it is an advantage to the city, I don't understand, except that it comes through taxation or something of that sort. Now, if the city had shown its appreciation of that section and kept up the values, why, I don't see why the railroads should be called upon to consider that. But I want to say also I am not sure that the city has fully appreciated the value

of that section. I think there are some possibilities there entirely independent—I am speaking now of the city not as a whole but as a matter of development along commercial lines—possibilities that have been overlooked. But that has nothing to do with this case. Nevertheless, the appreciation of property values on page 388 of the table—

Mr. GIBBON. The impression I get from that was it was purely a matter of municipal interest to taxation values. It seems to me that is a very important matter and can be—

A. What I don't wish to be understood on the matter is as disagreeing with the ideas that it is well to have property appreciated all over the city if it comes from the use of that property.

Commissioner EDGERTON. Isn't that partly argumentative, anyway, and also may it not be—wasn't it intended to be considered in connection with the suggestion that the city make some contribution?

A. That is true, there is some suggestion there. I presume you mean by the city the property owners?

Commissioner EDGERTON. Yes, that is, sources other than the railroads.

A. Sources other than the railroads, but the city we have concluded would not be called upon——

Commissioner EDGERTON. Oh yes, I am only discussing the report, that is all.

A. Would not be called upon to make contribution.

Commissioner EDGERTON. Of course, I don't think it is ever seriously urged upon this Commission that we

force the use of public utility money for the benefit of real estate owners.

A. That particular argument, I said, does not appeal to me, puzzles me a little bit.

I turn over to page 388, and I find in measuring the situation it is given a weight of 60 in favor of the plaza site as compared with subjects that seem to me of very much more value that are given lesser weights. For example, the immediate improvement in rapid transit which would be effected by the Southern Pacific-Salt Lake plan, is given a weight of 20. Now, I don't want it to be understood at all that I think it was any wrong motive in doing this, putting this in here. I have confidence that the engineers, in putting it into this table, felt it was of value to the city, of value to the situation. But I want to make protest to this Commission against that being given any weight.

Mr. SIMONS. Haven't you misread that quotation from page 388, "The adaptability to ultimate rapid transit?" Haven't you misread that, item 3?

A. No, no. "Item 19, immediate improvement in rapid transit under the Southern Pacific heading, 20".

Q. What is item No. 3?

A. Item 3 is the ultimate rapid transit. If I said ultimate I am wrong about it, but I think I said immediate if you will refer back.

Q. That is, 80 against 60?

A. Yes. 14, it is stated is partly covered in No. 5, and my objections to the conclusions are the same as in connection with No. 5.

15, as to freight draying, it is stated, "The plaza site is best inasmuch as passenger and freight vehicle traffic is separated." I don't understand that, I confess, because, in any event, under this plaza plan it is proposed to use the Santa Fe site for less than carload freight handling, which would place the two plans, the Southern Pacific and the plaza, on an equality in so far as that is concerned; and it would seem to me that blocking of those streets through here (indicating), in connection with the industrial district to the north here (indicating), would probably throw the advantage in favor of the Southern Pacific site. I don't find any argument in the report on this subject that is acceptable in comparing the two sites.

16, confinement of transportation facilities to natural channel—the banks of the Los Angeles River, says, "The departure at the plaza site is not of great importance because of location and improvements. The Santa Fe site is slightly better than the plaza site and much better than the Southern Pacific site." It would seem to me the Santa Fe would be first. It is right on the banks of the river and, as far as the Southern Pacific and plaza sites are concerned, if it is a matter of distance, why, you will find by just taking the map there that the faces of the stations are about the same distance from the river. That argument, however, is given a weight, page 388, of 20 in favor of the plaza and 12 in favor of the Southern Pacific.

17, release of lands in industrial district. "Arranged in order of benefit the three plans compare as follows: Plaza: Release Southern Pacific station site; use coach

yard for team tracks. Southern Pacific: Release coach yard site." For those reasons, as stated, we find on page 388 that the plaza is credited with 30, Southern Pacific with 9 and the Santa Fe with 21 points, that is, released transportation lands in the industrial district. The related question which seems to me would lead to an entirely different conclusion is as to the acquisition of lands in the industrial district, the total acquisition of some 65 acres here in connection with the plaza site, privately owned lands, and which the report states includes some fine industrial property. That is on page 510. "The balance of the proposed station site, other than this triangle, is made up of excellent industrial property, either used for that purpose at the present time or held for future development of that character". That is at the head of page 510.

I believe those are all of the points shown on pages 28 and 29 and upon which the conclusions in the report are based, backed up by the table shown on page 388. I don't wish to take your time in going through this table except to just point out a very few places where I disagree with the conclusions in the report, and especially to point out that, if in connection with the item 1, where a weight of 200 is given to the plaza as against 100 to the Southern Pacific, that the financial expense in providing a site of proper area and shape at the plaza ought to be taken into consideration, especially when the Southern Pacific site, as is shown in the report, and by the engineers, will be ample for at least 20 years. And as I have already stated, the application of the same financial aid to the—would create any site

in area and shape that might be reasonably desired at the Southern Pacific.

The monumental gateway and the esthetic and monumental possibilities, rated at 150, and we go down and find that the immediate improvement in rapid transit is rated only at 20, and yet I judge that to be, immediate improvement in rapid transit, the taking of the Pacific Electric interurban trains off the streets. I don't think that that is a proper proportion at all. The engineers, in the main, have very properly said that taking the Pacific trains off the street, pages 62, that the interurban traffic is most dangerous of all, page 123, that the high speed interurban cars are most dangerous, and page 230, that the elimination of grade crossings of the Pacific Electric are of greater importance than the elimination of grade crossings of the steam lines. I agree with those conclusions. I suppose we would all have different ideas as to the relative values of these various aims that are to be accomplished but it seems to me that, as has been stated in this report, and continually brought out, the main thing to be accomplished here is the elimination of grade crossings, and that fact ought to be given weight above everything else, and that the other matters are relatively unimportant. The question of the Salt Lake coming into the Southern Pacific station is not a question of a union station, but because it gives the Salt Lake, looking at it from the Salt Lake view point, the use of facilities already created at no investment expense to itself, and where there is plenty of room, but it is incidental to the question of grade separation, of taking the trains off of

Alameda Street, of taking the interurban trains off of the streets of Los Angeles, and of separating the grade crossings along the Los Angeles River, and that is the important matter.

Commissioner EDGERTON. Well, Mr. Shoup, from what you have just said, you, apparently believe that complete grade crossing elimination may occur without considering this question of union terminal station?

A. It could occur, as I see it, to the same extent that it would with the union station, if you simply bring the Salt Lake trains under the Salt Lake-Southern Pacific plan into the Southern Pacific station, and then enlarge that plan to whatever extent the Commission requires in connection with the separation of grades along the Los Angeles River, or, if you please, 4th Street. I was down there at noon, if you want to put a subway under there all right, if that is a justified expense—I say "if". And—or at Redondo Avenue, Redondo and Main, the north end of town, accomplished those things without spending this thirteen millions of dollars, is—the statement shows some excess here of $16,000,000, I believe, whatever the sum may be, to provide a union terminal station at this time. The Commission may know the demand upon railway companies for necessary transportation purposes, and they know also the cost of money, and, for that reason, it seems to me that only the essential things ought to be considered, if they are not going to upset the whole future of the transportation situation here, and that is not the case if you simply permit the Salt Lake to come across into the Southern Pacific station.

Commissioner EDGERTON. Well now, that brings us to this point, I will ask you two questions on that, Mr. Shoup, one; is there now a real necessity for a decision in this matter? I mean now not necessarily decision of the Railroad Commission alone, but by all concerned, that is to say, is there a real necessity that, in the very near future, the matter of the future of the railroads be determined?

A. You mean in Los Angeles?

Commissioner EDGERTON. Yes.

A. With respect to terminals?

Commissioner EDGERTON. Yes.

A. Not at all.

Commissioner EDGERTON. All right. How about grade crossings?

A. I think there is.

Commissioner EDGERTON. Now, will the determination that is now made—when I say "determination" I mean by all who will participate in it—fix the railroad conditions for a long period ahead?

A. Not any longer than the public interest requires. I presume that you—the thought in your mind is "Will the—" May I put it as I understand it?

Commissioner EDGERTON. Yes.

A. "That the expenditures will be of such a nature that it will fix the conditions"?

Commissioner EDGERTON. Yes.

A. That is the idea, isn't it?

Commissioner EDGERTON. Yes.

A. All right. I would say no. You leave the railroads in the same situation that they are now with refer-

ence to their tracks and facilities, with certain exceptions, which I will mention, and which would be the same 5 years; 10 years, 15 years hence, as they are now. Now let us see what these exceptions are.

An elevated road, steam line, from the river, across to the Southern Pacific—I am dealing now with the steam line situation—Southern Pacific station, and assuming that there is some radical change in the situation, that line might have to be discarded. That is not relatively a larger investment. I can get the figures for you, but I don't believe it is as much as the interest would be upon the proposed excess expenditures at the plaza site in one year. The other thing that might occur—but I want to tell you that this will be fixed. I think it will be very satisfactory. I am speaking now of the Pacific Electric situation—the only other thing that could occur would be taking the Pacific Electric—I am assuming now that there is an immediate relief for grade crossing elimination, we have got to do something and, taking that and your Pacific Electric elevated from the Southern Pacific station across the river, and brought to this Aliso Street private right of way, running along the Salt Lake right of way, and scrapping that, that part of expense—and I am not assuming the scrap value now—would be about $1,800,000.00. It would not take very many years to save that in interest, I don't believe, but, to my mind, the possibility of the subway on Main Street, or its feasibility——

Commissioner EDGERTON. Haven't you overlooked the possibility and probable expenditure by the Santa Fe?

A. I am dealing with the Southern Pacific plan—yes, I have—as to their putting up a station there?

Commissioner EDGERTON. Yes.

A. Yes, I have overlooked that.

Commissioner EDGERTON. I don't know that you quite get the point I want to reach, Mr. Shoup, and, preliminary to that, I want to call attention to the fact that the Daum case, so-called, and the decision in that case, has been frequently quoted by the railroads, in the sense that here permission was given to build a rather elaborate station, and now consideration is seriously being given to tearing it down. Now have we arrived at a position where if, for instance, this Railroad Commission gives their authorization to go ahead with the so-called original Southern Pacific plan, and the city gave you the necessary permits, whatever there may be, and you get your appropriation, from the proper officers of the railroads, and go ahead with the Southern Pacific original plan, or the Titcomb plan, put that into effect——

A. Yes.

Commissioner EDGERTON. Now would you say that within the next 25 years, with the extensions of that plan and the additions that may be made thereto, that the railroads would make no complaint in the event that consideration was given to some other site?

A. That would depend upon the circumstances. I would say this: That if this plan is put into effect—mind you it is to eliminate grade crossings, representing, I think, in all the circumstances, a minimum of expenditure——

Commissioner EDGERTON. How much——

A. That we would expect—I would expect to see it last for 20 years, but I might be entirely wrong about that.

Commissioner EDGERTON. Well, let me put it in a little bit simpler way, and rather crude language: How long would you expect to be let alone if the Southern Pacific-Titcomb plan is approved?

A. I haven't the faintest notion. I thought when the Southern Pacific station was built in 1915, that that would probably last some time, but it didn't, and I don't know.

Commissioner EDGERTON. You see what I am trying to arrive at?

A. Yes, I get that.

Commissioner EDGERTON. I want your opinion as to the importance now of a decision in this matter, for how long a time it will probably fix conditions.

A. In other words, so that you won't be disturbing things again?

Commissioner EDGERTON. Yes.

Commissioner DEVLIN. How long would it anchor you there?

A. Sir?

Commissioner DEVLIN. How long would it anchor present conditions?

A. When you say "How long" I am not in a position to answer that. This Commission would have more voice in that than I.

Commissioner DEVLIN. I meant from your viewpoint.

A. But in view of all the testimony here that that station is ample for 20 years at least, now the—this report and railroad engineers agree on that, and the grade crossings are eliminated, I should believe and expect that that question would not arise for 20 years. But assuming that some new factor enters into the case that we don't see now, then I say, answering you as to what would have to be eliminated to leave the railroads in the situation that they are now, but with the grade crossing problem solved, trains off of Alameda Street, interurban trains off the streets, new station, if you like, the Santa Fe—they are better prepared than I to answer that—I would expect to see the passenger end of the situation last for 20 years, and, judging from the report of the engineers, from the Conference committee, the views of Mr. Gregson and others, why, the freight situation has to be worked out some other way. In any event—and I would like to say, in that connection, that I don't know just where the Southern Pacific is going to be left with this freight situation under the view expressed by Mr.—— I don't know who expressed that, but, anyway, the conclusion that the Santa Fe might not be disturbed in its property rights, and, at the same time, the plaza passenger terminal be built, because the plaza passenger terminal takes the present freight facilities of the Southern Pacific, and even if it didn't take them, why, it blocks them off from access; but it does, for a coach yard, so, judging from the present temper of the people here, they expect the roads to maintain separate less than carload stations; they seem to be

satisfied with that situation. That is satisfactory to the Pacific Electric. The other situation would be very unsatisfactory because the proposed less than carload station at the Santa Fe, we would have no access to it, there is no provision for us to get up there at all, no electrified line.

* * * * * * *

Mr. DUBBROW. Mr. Shoup, in speaking of the reasons upon which you predicated your opinion as to the comparative merits of the two sites, you took as your text the statement that is contained in the engineering report. Now should consideration also be given to question of time that relief may be afforded by the respective plans?

A. Yes. It does not seem to be necessary to go into the question of need for relief through the elimination of grade crossings, as to its immediate desirability. There could be no doubt that the Southern Pacific-Salt Lake-Pacific Electric plan, modified as the Commission might direct with respect to grade crossings, including co-operation of the city, and so forth, would result in much earlier relief than any other possible plan, for these reasons: To carry out the Southern Pacific plan, as agreed upon—no, the Southern Pacific plan as presented to the Commission, with the modifications agreed upon, would simply require an order of the Commission, a permit from the city, and then the road would be clear. There are a few parcels of property to be acquired, but not many. I think the suggestion was made here that the work could be completed within two years. The time limit will depend

upon the labor and material market with respect to ability to get either. But there will not be the difficulties in the way that would be in connection with the plaza plan. It necessarily involves the condemnation of a very large area of property, 65 acres, and, judging from experience, that will take some years to accomplish. The first effort would be, of course, to acquire it without condemnation—I mean assuming that we have the condemning power back of the effort to acquire it. That, I believe, is still a question, as to whether or no it is possible to condemn, and I am not qualified to say, however, myself.

Mr. DURBROW. That is our opinion.

A. But assuming that it is possible, you would have all of these owners to deal with in this 65 acres. And that would take a long period of time. The plaza plan also depends upon the shifting of the Southern Pacific freight station from its present location to another equally commodious or with greater room, and that would introduce an element of land purchase elsewhere. The possible litigation over the plaza, which could not, as I understand it, be diverted to any use other than that which it is now put to without a vote of the people of this city, and, if I am right, there is some doubt even as to the power of the people to alienate title to that property. It would also involve a question that take a good deal of time. Then, in connection with the plaza plan is this subway along Main Street, which no one but the city can build. An amendment to the charter would be necessary before any private corporation could go ahead with that.

and I presume amendment—I am not sure about this—I presume amendment to the charter would be necessary before the city could even build a subway and lease it.

And then—that is immaterial.

I think that covers the chief causes of delay, no matter how expeditiously we might go ahead, but perhaps I should mention one other, and that is in moving facilities from one place to another, in the process of making the steps involving the movement of both the freight and passenger facilities of the three railroads, you have to proceed slowly because you cannot leave one until you have a place to go to, which would also involve some time. I am not quite sure it would take the 15 years suggested by engineers yesterday in discussion in my office, but it would take a very considerable period of years to carry out the plaza plan.

Q. In speaking of the Southern Pacific freight facilities which it is proposed to be used as a coach yard, just now it occurs to me that possibly you may be familiar with the provision of the mortgage of the Southern Pacific Railroad as to whether that property could be alienated for any such purpose or use.

A. The terminal property of the Southern Pacific Company, under their mortgages, cannot be alienated. You could not put another mortgage on that property directly.

Q. Now, Mr. Shoup——

A. And specifically.

Q. Mr. Shoup, in weighing the advantages and disadvantages of these respective sites, you have made

some reference to the comparative costs, $16,841,000 versus $35,348,000. I would like to ask you, please, whether those figures include only the new moneys that would have to be devoted to the site?

A. You refer to exhibit 27?

Q. Yes.

A. This exhibit was made up by the engineers. They replied to the same question that this included only new moneys, and that the railway properties that were utilized were not given any value in that relation. In other words, the Southern Pacific classification yards here were taken for a coach yard, necessitating the entire relinquishment of this property for coach yard purposes, that only the expense of putting in the coach yard tracks were included, and I understand that theory has been followed through the report of the Commission's engineers, and that there has been no allowance made for additional property to be acquired, if the removal of these classification yard facilities further north should make necessary the purchase of more property than is now owned. It is known, of course, that the Southern Pacific has some property up there to be devoted to that purpose, but the Southern Pacific has not considered the abandonment of this yard. In that connection the report takes credit—in connection with the expenses, I am not referring to the comparison between the $16,000,000 and the $35,000,000 on exhibit 27, but to the statements as shown in the back of this report by the engineers, to which I can refer by table if desired, but I think you are familiar with that—takes credit for the property re-

leased as against the expenditures that are to be made. These expenditures being represented in cash. I do not concur in the view that this is proper to say that money shall be spent to acquire property at the plaza site, that that should be offset by the possible sale of Southern Pacific land where the station is now, does not appeal to me as a proper suggestion. If a union terminal company is formed to buy this land, it would—before it could take any credit for the Southern Pacific property, have to acquire it and pay for it. But beyond that, and not looking at it from what is really a practicable viewpoint, which is just as I have stated—it is very much easier to spend money for property than it is to sell it, even at the price suggested down there of $3.50 a square foot, some such amount as that for the Southern Pacific station site. I have been listening all through this hearing for somebody to suggest also just what we are going to charge for that Southern Pacific station down there, for the $640,000 investment, the reproduction value of which is likely, at this time, in excess of a million dollars. I know that it was built with the expectation, and aside from the question of grade crossing elimination affecting it, of serving for some considerable period of years. There is no suggestion anywhere that, notwithstanding that it is commodious and takes care of all the business and all that, it should be considered in connection with this situation. I don't know whether we can charge that to operating expenses or not, I don't think so. But we are supposed to give up a commodious, handsome, recently constructed station, and either build

another one or pay rent on another one, without any credit for this building, as I understand this report and its conclusions. That is just to one side, but to illustrate the point that the money that is to be spent in connection with the plaza terminal—and that is true of the Southern Pacific terminal also—is given consideration, but not the property questions that are indirectly involved, and which belong—the properties belong to the railroads. And a further matter about that I object to is taking credit as if it were cash for the property released.

Mr. DURBROW. So that these figures, $16,841,000 really represents the entire cost of carrying the Southern Pacific-Salt Lake-Titcomb plan into effect, but the figures, $35,348,000 does not include the entire cost of carrying that plan into effect, because it does not take into consideration the necessary amount—the plaza plan——because it does not take into consideration the necessary amount that would have to be expended in acquiring lands owned by carriers which would be confiscated and used for that purpose, and it would necessitate those carriers acquiring similar properties at other points?

A. That is true, without attempting to say what other property would have to be acquired.

Q. But other properties would have to be acquired, would they not, Mr. Durbrow?

A. I think so. That is my judgment.

Q. Now, Mr. Shoup, this question of difference in cost of these plans is an important one to the South-

ern Pacific and the Pacific Electric, for whom you are speaking at this time, is it not?

A. It is very important. I may say here are two plans, one of which takes the Pacific Electric—I am referring to exhibit 27—off the streets of Los Angeles, so far as its northern and southern interurban trains are concerned, puts them into one terminal, makes practicable the interchange of equipment, takes the passengers off the Southern Pacific-Salt Lake station, total expense involved $779,000; the second plan, to accomplish the same purpose, under the plaza plan, except, of course, it takes them by the plaza, save that the Southern Division passengers would have to change down at 6th and Main Streets, but accomplishing the same grade elimination, which is the important matter to my mind, costs $9,733,000, with the further difficulty of not knowing whether it is practicable to be put into effect, because it takes Main Street use into consideration, and the very objectionable feature of having no connection at 6th and Main between the two divisions. Now the burden of carrying the Pacific Electric falls chiefly upon this community, a matter of direct interest to the four counties that it serves, Los Angeles and its suburban communities. It becomes a question of somebody paying us additional revenue to carry this extra five millions of dollars, and the Pacific Electric financial situation—I have shed tears over that so often I am not going into it now, except to say that it is of a nature that you need to justify your cause very well indeed before more money can be secured to put into the property, and what I can justify upon

a grade elimination and safety—regularity of operation and quicker service between the center of Los Angeles and these outside points, ranging, as Mr. Titcomb said, for the saving of 15 minutes, and averaging probably 6 minutes for the northern division and 3 minutes for the southern, is one thing which will command attention, but to suggest an additional $5,000,000 to make possible a union terminal plan at the plaza will not get the same consideration, it could not.

Now as to the Southern Pacific-Salt Lake end of it, the Salt Lake can speak for itself; the Southern Pacific has borrowed $15,000,000 to provide more equipment at a rate of interest in excess of 7 per cent, since the first of June, and it will have to borrow more money, and non-essential expenditures, those that can be avoided in order to provide money for the additional equipment and—I mean locomotives and cars, additional side-tracks, second tracks where needed—the demand is such that we need all the money we can get for that purpose, and non-essential uses of money ought to be avoided, and I want to say, Mr. Commissioner, in that connection, that I regret the building of the architectural features of the station as being hardly worth while. I think Mr. Goudge's definition suits very well.

Mr. DURBROW. Mr. Shoup, taking into consideration the conditions as they obtain today, as they may be anticipated 20 years from now, do you believe that the convenience of the public, or the public necessity requires any more commodious or extended facilities than those that would be provided under the Southern

Pacific-Salt Lake plan, to accommodate the needs of the Southern Pacific and Salt Lake traffic—passenger traffic?

A. My belief is the Southern Pacific station, with such additions thereto—I don't mean reconstruction—as would be possible in its present location, will give a satisfactory service 20 years from now.

Mr. DURBROW. That is all, thank you.

(Tr. 2055-2097.)

(RICHARD SACHSE, recalled.
Cross-Examination.)

Q. I was going to shorten it up by saying that you adhere to and re-state the conclusions set forth in that report?

A. I do. It seems to me perhaps this is what you have really in mind—I think we are all anxious to shorten this. I am, too— I am prepared to say, and I would recommend to the Commission, that if it were true that these so-called intangible advantages in the plaza plan as compared with the S. P. revised Titcomb plan cost $16,000,000, or any such sum, I would recommend against the plaza plan, I would recommend, rather, against the expenditure of the $16,000,000 under any plan.

Q. Under any plan?

A. But that is not the case.

* * * * * * *

Q. What do you say as to the adaptability of the plaza plan, so-called, to the development of transporta-

tion in any form which it may take in the future, for the City of Los Angeles?

A. If I may I would like to answer that in this way: it seemed to me the burden of Mr. Damon's testimony was two principal points. One was that we did not provide for a succession of proper steps to be taken to accomplish the ultimate end, whatever it might be, and that we did not go far enough in the future and really provide for the solution, ultimate solution. Well, as to the second of his criticisms, if it may be so called, is right. In other words, the scope of our investigation was limited by the proceeding before the Commission and by the instructions we received. The first, I think, he is in error. We had provided for different steps and, of course, they may be varied. Now, I am satisfied that the plaza plan accomplishes what Mr. Damon had in mind, namely, in so far as it is practicable or possible to plan for the future, it will take care of the transportation needs in the City of Los Angeles for all time to come. I say that advisedly because if electrification comes as he suggests—and I believe he is right—the plaza plan is perfect from that standpoint. If Los Angeles in 20 or 50 years is to have a north and a south main depot—and I am not at all sure about that—and if those two are to be connected by an elongated subway operated electrically, for perhaps, as he seemed to have in mind, main line transcontinental trains, well, that is perfectly feasible under this scheme of things.

Q. Did you notice that where he located the north station in his general diagram or analysis of the outer and inner site?

A. At the plaza or in the vicinity of the plaza. And I might say—which is perhaps the most important point after all— that under our plan, under the plaza plan, I will say it is not necessary to undo anything that is done step by step, or in the interim.

Q. Calling your attention to the matter of operating expenses, there has been presented here some evidence in regard to the cost of operation under these various plans. I think Mr. Williams and others mentioned that. You have discussed that in your report, have you?

A. Yes.

(Tr. 2138-2140.)

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A. Well, a great deal might be said on it. We won't have time, though. It seems to me Mr. Shoup's—one of his principal points of argument or testimony was that this extra expenditure of the plaza plan was not justified by the savings, especially the railroad operating savings, which would result. I believe not enough attention is given to this matter of operating savings. It is true we don't know exactly what it would be and it was impossible, impracticable to figure out while we were making the studies for three different schemes what these operating expenses would be, because it would be a tremendous job. I think we should rather shorten that by eliminating those plans which are clearly out of the question and then confine our-

selves to the smaller task. But we know, as I stated yesterday, I think, we know quite well under any given arrangements whether the operating expenses will be increased or decreased and which ones will be increased and which ones will be decreased. Nowadays, where wages and all kinds of railroad operating expenses go up at an alarming rate, and the end is not yet, as I think, it seems to me carriers are justified in making quite large, comparatively large, expenditures if operating savings can be incurred. And that is more true because those expenditures, those operating expenses, they go on for all times, while it is perfectly possible, notwithstanding Mr. Shoup's testimony, that the interest accumulates increased capitals and fixed payments, it is possible and it is being done right along to wipe out capital expenditures by amortization in a given time. They simply disappear to cut any ice in further operations. Not so with operating expenses. And I believe that whatever additional cost there is under the plaza plan, first cost, or under any sound and comprehensive plan, as compared with a temporary arrangement and a piecemeal development of the railroads, individual roads, that that difference will be far offset in the long run by increased operating expenses. And that is only part of the story, perhaps the least important. I can make my point clear, in a minute, I think, by saying it is perfectly feasible to have a satisfactory freight lay-out, let me say—I mention freight merely for illustration—say 10 or 5 or 15 miles from Los Angeles, which will give the minimum operating costs to the railroads, leaving the costs to

the shipper of getting his stuff to the depots and away from the depots entirely out of consideration. Of course, to leave that out of consideration is simply ignoring a very important factor and it would be ridiculous to ignore it. So when you talk of operating expenses you want to keep in mind the operating expenses of all parties, not only the operating expenses of the carriers.

Q. And I understand that you adhere to the statement which you have made in the report as to the advantages of the operating costs for the site selected by your report?

A. I think it is superior as compared with the Southern Pacific, and as I stated in the report, nearly equal in that respect to the Santa Fe plan, so-called.

Q. Taking up the matter which you answered just a few minutes ago in respect to the efforts of the individual carriers as such, is it, in your judgment, possible for the individual companies to approach or solve these grade crossings and terminal problems alone, individually?

A. Well, it depends on what you mean by "solve". Of course, anything will do in a manner. In other words, the City of Los Angeles is going to go ahead and can manage under any arrangement. But I believe the best scheme would be to plan with all the railroads, having in mind all the railroad needs of the city, and that gets you, as I see it, to a union terminal proposition.

(Tr. 2140-2143.)

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Q. Now, in the economical treatment of the grade crossing situation, it presents the question of location of the tracks for all purposes, does it not, for all transportation purposes?

(Tr. 2146.)

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A. Well, all tracks that are affected in those localities where we considered separations, of course, they will all be affected, but not all tracks in this entire area are, of course, affected by grade crossing separation.

Q. Where, generally, are they not?

A. A good many industry tracks.

Q. Considering main line tracks?

A. Oh, yes, main line tracks are affected.

Q. All affected, are they not?

A. Yes, but not everywhere. When you get beyond a certain limit, why, then they are no longer affected.

Q. In regard to the plans of the Santa Fe and the requirements of that depot, has, to your knowledge, or do you understand from information which you have received, that changes are necessary, and do you consider that they are necessary in the location and in the use of the Santa Fe depot at its present location?

A. My view as regards the Santa Fe passenger facilities, that is the way I would put it, are that, sooner or later, the Santa Fe will have to make improvements there, betterments. Now, whether they do that on their own account, as an individual carrier, or whether they do it in conjunction with other carriers, or as a union terminal, that is, of course, one of the questions that is

right here under consideration. I think the best thing is to treat it—to treat all these roads together.

(Tr. 2146-2147.)

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Commissioner EDGERTON. Mr. Sachse, would it be possible to prepare a brief analysis of Mr. Titcomb's figures?

A. Mr. President, I think the best way to clear this up is by my making this statement: when this was introduced yesterday, we asked, of course, for the supporting details, because it was impossible to show that on this sheet, one sheet, covering, as it does, the estimate, in the one case of $35,000,000, and the other of $16,000,000, or nearly $17,000,000. Then Mr. Crossman handed Mr. Weeks a number of supporting sheets with the details. We looked over those as rapidly as we could and there were still very large items—millions—that were not apparent—where the differences were not apparent how they came about. The latest I know of this situation was that Mr. Crossman said to Mr. Weeks, "Well, we can go over those together", which is perfectly satisfactory to us. So what I would do for my own information in any event is to see how this $16,000,000 and this $35,000,000 and the difference between the two comes about, whether it is really a proper comparison. That we have not yet been able to do. We will be able to do that. Not, however, from exhibit 1 and not altogether from exhibit 2, because the Southern Pacific has made certain arrangements that are apparent from neither of those two exhibits. I do know,

however, from a mere looking over of exhibit 27, that the two figures are not comparable.

Commissioner EDGERTON. Well, is there any objection to Mr. Sachse preparing a brief supplemental report?

A. It need only be a table.

Commissioner EDGERTON. All right, a table and then have it submitted to all the parties, without the necessity of introducing it in the hearing.

(Tr. 2151-2152.)

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Mr. KARR. Might I ask first, Mr. Sachse, is the sheet that you refer to, when you say that Mr. Crossman handed certain sheets to Mr. Weeks, are they the sheets contained in Exhibit 28?

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Mr. SACHSE. The answer is yes, Mr. Karr.

(Tr. 2153.)

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Commissioner EDGERTON. Apparently Mr. Gibbon has in mind the filing of a brief with the Commission. Is that the desire of all parties?

Mr. DURBROW. No, Mr. Commissioner. This is the situation. Certain evidence is before the Commission, and the $35,000,000 figure as predicated upon the unit prices contained in the Engineering Conference Report. By exhibit 28 we undertook to comply with the request for supporting data of the so-called Titcomb plan, originally, or as revised. Now, if this data contained in the report is not sufficiently comprehensive for the purpose of this Commission or of their as-

sistants to determine those figures are correct, or not, as Mr. Sachse has suggested yesterday, Mr. Crossman will sit down with him and give him all that information.

Commissioner EDGERTON. Can't that result be evidenced in writing which may be submitted to everybody?

Mr. HALSTED. Yes, and if necessary to examine Mr. Sachse we would advise the Commission. It may not be necessary. I would suggest that that be made up and submitted to the parties.

(Tr. 2153-2154.)

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Commissioner EDGERTON. Mr. Durbrow, this would appear to me to be true: That you should welcome any written statement emanating from Mr. Sachse embodying his ideas or presentation of anything said by your witnesses, disclosed to you frankly in writing. I don't see why you should have any objection to that.

Mr. DURBROW. No.

Commissioner EDGERTON. Why, then, is there any objection to Mr. Gibbons' suggestion that, whatever the result of Mr. Sachse's analysis, after conference with Mr. Crossman, that he reduce that to writing and submit it to all the parties?

Mr. DURBROW. Absolutely.

Commissioner EDGERTON. That will be understood, then.

Mr. HALSTED. Does that mean, your honor, we don't——

Mr. DURBROW. Any analysis which may be made of figures by Mr. Sachse will, of course, show the sources from which they are derived. It is all predicated, must be predicated on the evidence introduced before the Commission. Now, if we wish to file with the Commission an analysis which we will make, predicated on the same data, why, of course, the Commission would welcome that as well.

Commissioner EDGERTON. Well, I think we have no misunderstanding on that.

(Tr. 2154-2155.)

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SAMUEL STORROW, recalled.

Direct Examination, resumed.

(Tr. 2169.)

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Mr. SIMONS. Very well. Just one or two questions of Mr. Storrow. Mr. Storrow, you, in the conference meetings, and at various times, have continued your studies and your observation and examination of this entire grade crossing and terminal problem, have you not?

A. Yes, sir.

Q. And you have been connected with it from its inception, as early as 1915, and before that in the original committee on which you acted with Mr. Hamlin and Mr. Howell, up to the present time?

A. And long before that.

Q. And before that. And you have been present at these hearings?

A. Yes, sir.

Q. And seen the various plans that have been offered and the testimony affecting them. Now, is it your judgment now, as an engineer, that this terminal problem, consisting of the grade crossings and the passenger and freight unification, is, of necessity, combined together, and to be treated as such in any plan for their amelioration or betterment of these conditions?

A. I can not conceive of the settlement of the problems in any satisfactory way, without all those matters, that is, the freight terminals and their operation, the lay-out of the main tracks and their operations, the arrangement of grade crossings and its operation and the union passenger station and its operation, I can not conceive the problem being solved without all those things being an intimate, integral, inseparable part.

Q. And in view of the expenditures which are contemplated, or may be necessary in the immediate future for the services of these various carriers, do you consider, and is it your opinion now, that it is necessary that this problem be treated, and the relief secured, by a comprehensive plan which will undertake the entire solution of the problem?

A. I can not conceive any other way of doing it.

Q. Your answer is 'Yes'?

A. Yes, sir.

(Tr. 2176-2177.)

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Los Angeles, Calif., Oct. 24, 1921, 10:10 o'clock A. M.

(Present: Commissioners Brundige, Rowell, Martin and Benedict.)

Commissioner BRUNDIGE. The Commission will be in order and we will call Case No. 970 and associated cases. Mr. Gordon, in this case it is my understanding a stipulation has been entered into between the parties in interest in this matter concerning the application for rehearing. Is that correct?

(Tr. 2458.)

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Mr. GORDON. Well, the stipulation is to the effect that the Commission may, if it granted the rehearing—the stipulation was made before the rehearing was granted—the Commission might take this formal view of the premises upon notice to all parties—well, I have the stipulation here now and I will read it.

"It is hereby stipulated on behalf of the undersigned party (or parties) to the above-entitled proceedings that if the Railroad Commission grants a rehearing thereon in response to the applications therefor now pending, all of the evidence and argument heretofore submitted shall be considered by the Commission as evidence and argument on rehearing, and that such evidence and argument, together with a view of the premises by the Commission, to be hereafter taken upon formal notice to all parties, shall comprise the entire record on such rehearing."

(Tr. 2458-2459.)

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Mr. GORDON. In one particular I would like to ask a further stipulation. These proceedings originally included a number of associated cases, No. 970, 971, 972,

974, 980, 981 and 983. Those various cases were set down for hearing together, and the hearings had proceeded to some extent when there was filed application No. 3346 by the Southern Pacific and Salt Lake Railroads in which a new element was introduced, being the plan of these railroads for a union terminal different from that which had been suggested theretofore, and I presume it also had some bearing upon the grade crossing situation. That proceeding, application 3346, was then combined with the other cases which had been in the process of being heard. The stipulation which has been filed by the parties does not formally include application 3346 and I would like to ask at this time if the parties will be willing to stipulate that the same stipulation may apply as to application 3346 as has been made concerning cases 970 and the associated cases. Is that satisfactory?

Mr. PETTIT. Satisfactory to the Salt Lake.

Mr. KARR. Yes, that is satisfactory to the Southern Pacific. I speak for Mr. Durbrow. As you know, I appeared here for him at odd times during this hearing. I telephoned him—rather, Mr. Durbrow phoned me on Saturday that he had just gotten back from the East and did not feel well and asked me if I could represent him. And it is satisfactory to the Southern Pacific and the Pacific Electric, for they are in reality a party to that application, having interjected ourselves into it. And Mr. Pettit, the general attorney of the Salt Lake, speaks as I do.

Mr. PETTIT. Correct, entirely satisfactory to the Salt Lake.

Mr. PAUL BURKS. On behalf of the Santa Fe—by the way, Mr. Commissioners, I desire to express regret for Mr. Camp not being able to be here on account of his absence from the state—and I wish to say that on behalf of the Santa Fe it is satisfactory.

(Tr. 2459-2461.)

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Mr. KARR. I understand from the itinerary that we proceed down Sixth Street to the Pacific Electric station. Is it your desire that we stop there and go through that terminal at this time?

Commissioner BRUNDIGE. It is, yes. If there is nothing further the Commission will now proceed to view the premises that are under consideration.

(Whereupon, at the hour of 10:30 o'clock A. M., the further hearing of this matter was suspended and the Commissioners and interested parties proceeded by automobile to the Pacific Electric station, Sixth and Main Streets, Los Angeles.)

(Tr. 2465-2466.)

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Commissioner BRUNDIGE. Mr. Workman, did you have omething?

Mr. WORKMAN. I just wanted to draw the Commission's attention to one point in connection with the oncentration of traffic at this point. The Commission as now had the experience of endeavoring to reach the ation on an ordinary day, not unusually crowded at l. The point I desire to make is that greater mistake uld be made, in my opinion, than the permitting of rther concentration of traffic at this point by the

dumping of all of the Pacific Electric station passengers at this one point, whereas a very considerable percentage are now distributed along Main Street and San Pedro Street and would be further so distributed if Mr. Sachse's plan were carried out. We cannot confine ourselves to looking at this situation only at the present day, as it exists now, but must look for the future. And looking to the future, it is no exaggeration to say that the city streets of Los Angeles, Sixth and Seventh Streets and the other approaches to this site, will be wholly inadequate to handle the traffic that would be dumped at this one point.

Mr. KARR. Of course, the plan as outlined in the record before the Commission contemplates that a considerable amount of this distribution service which has been referred to by Mr. Workman will be continued to be done along Main Street. The plan contemplates a junction at Echandia Junction and particularly the Pasadena traffic in mornings and evenings will be distributed along Main Street. This building you will see as we go west now has a runway through it so that you can loop the service up and down Main Street. It is not part of the Pacific Electric project to abandon Aliso Street, Los Angeles Street, Macy Street lines; they will permit also to whatever extent necessary the selection and distribution of passengers south of Sixth and Main Streets, down Main Street to Ninth Street, where a loop service is now maintained mornings and evenings. That trackage is not proposed to be abandoned for such service as is necessary to that distribution. I just call your attention to the record as it is made here.

Mr. SIMONS. Will the Commission open this map which is handed them by Mr. Karr, just for a second before we leave this spot. We are now standing at the place called the Pacific Electric depot. I call your attention for a moment looking due east, and then looking at this map, when we reach the structure shown as the passenger station and the curve from the west, overhead structure, I desire to call your attention to some specific features as to that condition at Sixth Street. You will see the complicated arrangements as they cross to the east, at the south of the Arcade station. At that point I desire to talk to you for a moment.

Mr. KARR. We will go over there, I suppose, and look at that.

Commissioner BRUNDIGE. You will be given opportunity when we reach that point.

Mr. SIMONS. Just before that I wanted you to note the curve and the high structure as it reaches Sixth Street here (indicating).

Mr. KARR. In going out, gentlemen, I would like to take you down the runways.

SOUTHERN PACIFIC ARCADE STATION AND TRACKS IN REAR THEREOF.

11:45 A. M.

Commissioner BRUNDIGE. Mr. Williams, I believe you have a statement you wish to make?

Mr. T. H. WILLIAMS. Now, gentlemen, with the Southern Pacific-Salt Lake joint plan of operation of this station and occupation, this side of the building was

to be turned over to the Salt Lake for offices, for division superintendents and division staffs of their divisions who have headquarters here. I simply wanted to point that out as being part of the Southern Pacific-Salt Lake plan (indicating).

Mr. GORDON. The south end of the present structure.

Mr. WILLIAMS. As the Commission goes along I would like to have them simply fix in their minds that this was the part that was to be assigned to the Salt Lake, and we wanted to call attention to the fact that this station and grounds and trackage represents an investment of $3,500,000. When we get out to our freight stations that it is proposed to confiscate I would like to point those out and give you an up-to-date representation of the cost of the buildings and the trackage in that, and so forth. I think you wanted to see the entrance to the station at Sixth and Alameda next, did you not?

Mr. SIMONS. Point out to the Commission where the end of the grade to the umbrella tracks strikes.

Mr. WILLIAMS. Mr. Crossman, you can do that.

Mr. SIMONS. We want to know your grade starts out of the station here.

Mr. KARR. This grade here is one per cent to the north and the new will be one per cent to the south.

Mr. SIMONS. Where is the dividing line?

Mr. WILLIAMS. We are coming right up that way now.

Mr. SIMONS. At the place where we are standing, which is described in the testimony as the south end of the umbrella tracks which you see on my right here

(indicating), at this point the tracks, entrance tracks of the Southern Pacific under this plan of the depot start with a one per cent—.6 and then one per cent compensated grade to the south, turning to the east over Sixth Street. At that point you will find the diagram as you have in your hands and an exhibit on page 332 of this report, you will find it shows what we are about to reach. I desire the Commission as they go there from this point to understand the lay of the land. I have the map here in my hand, which you all have as an exhibit and which is known as the treatment of the Sixth and Alameda Street situation. The exhibit is figure 118. You can see by looking at it where we are standing now, can see Central Avenue and the tracks that come up and go out under the Pacific Electric to the west. Remember our grade begins here and turns to the east and curves under those tracks.

Mr. WILLIAMS. I wanted to make another statement to you here. As you notice here, there are eight tracks with umbrella sheds. In all our plans we contemplated that this was ample trackage. We know it is ample room to take care of the combined business of the Salt Lake and the Southern Pacific. But at this point I wanted to point out we still have four tracks beyond here on which umbrella sheds could be erected and which could be used to serve the station, as we have these tracks. So at this point you get a good idea of further development that we contemplated whenever it is necessary. Now we want to go down to Sixth Street and then to Fourth Street, I believe.

Commissioner BRUNDIGE. Yes, we will now go down to Sixth and Alameda.

SIXTH AND ALAMEDA STREETS.

Commissioner BRUNDIGE. Mr. Simons, did you have a statement?

Mr. SIMONS. On the exhibit that Mr. Karr handed to you on the Pacific Electric bridge there, I desire to call the Commission's attention, supplementing what I said at the Pacific Electric station, to this: As we look east along the trestle, that we are now standing at the point south of the Arcade station and west of Alameda Street, on Sixth Street, and it is at this point that the Southern Pacific furnished the profile of its treatment for grade crossing elimination, which is figure 118 on Southern Pacific exhibit 18 in the record and which appears in the Sachse report at page 333, and it is that consideration which I desire you gentlemen to make on the ground, consideration of the character of that structure as outlined there, and recalling the fact, as Mr. Williams has explained to you a few minutes ago, they assume to have additional ground to the east for further umbrella tracks in excess of their existing eight, to the east of their so-called trackage, and this entrance into the Southern Pacific at a one per cent curved grade at this point (indicating). That is all.

Mr. WORKMAN. I would like to point out as conclusive evidence of the fact that the property of the Southern Pacific is not now large enough to accommo-

date this traffic and handle its station work, that they can not even make their tracks come together, bring their tracks together on their own property, but have to use the public streets. I am pointing to this situation (indicating). That, therefore, the property known as the Arcade station side is wholly inadequate in area for its present service and cannot be added to as proposed under the Southern Pacific-Salt Lake plan.

Mr. WILLIAMS. In reply to that I would like to say that, in view of the fact we operate on Alameda Street, these several blocks which our station grounds and station building are represented by here, would have to have an entrance off of Alameda Street at one end or the other, or at both ends, as we operate by franchise on Alameda Street today. I think the testimony given at all of the former hearings shows whether the present property which you see now is adequate to handle not only its present needs but the future needs of the business.

Mr. KARR. Of course, if the track was cut off at Sixth Street and at Fourth Street there would be no longer any station, is that your idea, Mr. Williams?

Mr. WILLIAMS. No, we would not have any way to get in at all.

Mr. GORDON. There is another feature I would like to call attention to. We are now at the grade crossing of Sixth Street over the tracks of the Southern Pacific. There is in the evidence a statement concerning the volume of traffic at this point, the percentage of time during which the crossing gates are down. As we stand you can observe to some extent the character

of automobile and pedestrian traffic which goes over this crossing. Also you will notice the trackage which is referred to by Mr. Workman, being the trackage running into the Southern Pacific station (indicating).

(Tr. 2468-2474.)

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Mr. BARNARD. I would like to call your attention to the drainage situation which is created by the depression of both Sixth Street and Alameda Street at this point, because of the fact that the Southern Pacific can not get sufficiently above grade of the streets coming out of its coach yard to avoid a very considerable depression at both of these streets mentioned.

Mr. SIMONS. Might I suggest that we could drive around to the east side of the station by going down Alameda Street to Fourth right now, Mr. Commissioner.

Commissioner BRUNDIGE. We will get into our machines here and go over to Fourth Street and then come back to the coach yards.

(Tr. 2475.)

FOURTH AND ALAMEDA STREETS.

Mr. WORKMAN. I would like to be heard here.

Commissioner BRUNDIGE. All right, Mr. Workman. Gentlemen, Mr. Workman has a statement he wants to make.

Mr. WORKMAN. I want to point out to the Commission that this is a public street bordering us on the right here, on which the traffic is very heavy. I want to point out the situation here as a further confirma-

tion of the fact that the Southern Pacific at the present time has not got land enough in that tract bordering on the south here to operate its present station without infringing upon and using the present streets to the extent of nine crossing tracks.

We are standing just west of the corner of Fourth and Alameda Streets on Fourth Street. It has been suggested by the Southern Pacific Company that we can relieve the situation by putting an underground tunnel here. The evidence shows, however, they can not get the grade in the length of their track to get a proper clearance to go under the tracks. It was then suggested that we push these grades west and east, but I would point out to the Commission such a solution would be wholly unsatisfactory because this is a district of heavy teaming where grades are very objectionable. I would point out the fact that the district already suffers by the cutting off of Fifth Street, which congests the traffic on Sixth Street which we just left and on Fourth Street where we now are. The second solution suggested by the railroads was that they eliminate Fourth Street. In fact, Mr. Titcomb testified they had it, that it was their property. I think you will agree with me that they have when you look at it here. There was a suggestion that they would move it half way north to Third Street. If the Commission cares to walk over in that district they will find as many tracks there as there are here at the present time, so that the situation would not be relieved by that move at all.

The main point, however, I want to call to the Commission's attention is that this property known as the Arcade site is now inadequate and certainly will be more than inadequate when another road is brought in here.

Mr. WILLIAMS. In answer to that I want to point out to the Commission that, instead of using this street as incessantly as we use it today, you understand under this proposed Salt Lake-Southern Pacific plan we come in along the river-bed into our station here and the movements, instead of being across here as frequently as they are today, will be largely from the other end over the overhead into this station. And I think you will find it was testified at the other hearings that the movements would be far less up here under the new proposed plan than they are today. I would like to have Mr. Crossman, our Southern Pacific division engineer, explain the special treatment we expected to put in here, if it was found necessary, looking forward to taking care of that travel with an underground passage.

Mr. CROSSMAN. We first proposed to follow out Mr. Sachse's suggestion of a subway which can be built with proper grade leading from Central Avenue either to Alameda Street or across Alameda Street. We proposed secondly to cut Fourth Street, move Fourth Street north just beyond the ice company property and cut off the tracks at that place so there would be no tracks crossing Fourth Street, eliminate Fourth Street as a street crossed by tracks.

Mr. BARNARD. I would like to ask, if you use the Sachse scheme, how you will serve this ice company property north of here and the express car business which you have. How will you avoid crossing Fourth Street if you serve them?

Mr. CROSSMAN. Serving who?

Mr. BARNARD. The ice company and the carload express business.

Mr. CROSSMAN. The ice company is this side (indicating).

Mr. WILLIAMS. For such switching as would be necessary to take care of this ice company it would be necessary, of course, to cross Fourth Street; but that would be small.

Mr. KARR. We can eliminate this by underground or overhead or by the elimination of it, that is the only way that it can be eliminated.

Mr. BARNARD. In that case it would involve raising the property of the ice company if you are going to serve them an overhead crossing.

Mr. KARR. Which might not be insurmountable.

Mr. BARNARD. Except it would involve raising your whole station yard.

Mr. WILLIAMS. It is my recollection from the testimony of the other hearings that this is a stub street, does not go much beyond here.

Mr. WORKMAN. This is a through street, clear to Boyle Heights, or at least to Lorena Street, a couple of three miles of here, and, of course, you are all familiar with how important a street Fourth Street is on the west.

Mr. Gordon. The same thing that I stated with reference to Sixth Street, so far as the importance from a grade crossing standpoint, is applicable to this crossing, Fourth Street crossing of the Alameda tracks, being one of the grade crossings concerning which there is evidence in the record, and you can observe here the character of the crossing at noon on Monday. The traffic here at Sixth Street is very heavy. Apparently there is a great deal of automobile traffic, both pleasure cars and industrial cars that use this street.

Commissioner Brundige. Anything further?

Mr. Williams. We want to say in reply to that that an overhead structure bringing these trains, Salt Lake and Southern Pacific, into this station will take away the traffic from Sixth Street. They come in on an overhead, not on the grade of the street, and the switching on this street will be greatly minimized because the engines will return over that overhead.

(Tr. 2476-2479.)

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One o'clock P. M.

Commissioner Brundige. We will proceed now to Eighth and Alameda Streets.

(Whereupon Commissioners and counsel proceeded to Eighth and Alameda Streets.)

(Tr. 2479.)

Crossing at Butte Street and Santa Fe Ave.

Commissioner Brundige. Anybody want to make any remarks on this subject?

Mr. WILLIAMS. This is the point where we are going to reroute our business.

Mr. KARR. All main line trains from the south. As I understand, it is the same route for all plans that has been suggested so far.

Mr. WEEKS. That is correct.

Commissioner BRUNDIGE. Then our next stop will be the Seventh Street bridge.

ON SEVENTH STREET BRIDGE OVER LOS ANGELES RIVER.

Mr. KARR. I would like to point out some things here. This proposed elevated which leaves the Pacific Electric station goes east and then, parallels the proposed Salt Lake-Southern Pacific elevated, crosses the river just north of the ice house there, just this side of the sewer, branching to the north and south, goes over Seventh street overhead here and get down to grade at Ninth Street and will go down to grade under the Fourth Street bridge which you see just up the river (indicating). That is all.

Mr. SIMONS. If the other Commissioners can look over the shoulders of President Brundige, please note page 335, figure 120, exhibit 19 of the Southern Pacific, which shows where we are standing practically now on the Seventh Street bridge, on the west side of the bridge. I wish the Commissioners on the ground to note the treatment of these trestles as they approach the Y at the west of the river, the overhead structures all the way through the western section of the

city we have been traversing, and when you examine this more leisurely, here is the structure to grade called attention to, crossing the river, meeting practically in the river-bed at this point (indicating), and this is the southerly approach going down as he has described it to you (indicating on exhibit).

Commissioner BRUNDIGE. We will turn here and go back and cross the river on the Fourth Street bridge, stopping at the westerly end of the bridge.

Mr. SIMONS. Do we stop east of the river?

Commissioner BRUNDIGE. Yes, stop at the Salt Lake yards.

Mr. GORDON. I wanted to make one further statement concerning this crossing: That the crossing on Seventh Street, the trackage both east and the west sides is treated in the opinion and order as it now stands and the evidence, I believe, shows that the density of traffic at this point is such that the gates are down 19 per cent of the daylight hours. If that is not exactly correct the record will show. But in any event, it is very apparent the traffic is heavy here, and this is a much used thoroughfare leading out and connecting with the boulevards leading to Whittier and southerly to Santa Ana and San Diego.

Mr. WORKMAN. And in this connection I would like to say that the Automobile Club has recently made a count for establishing the relative importance of the inlets into the city. It is found more traffic comes over Seventh Street than any other with the single exception of that which comes in over the—from San Fernando Valley over the Broadway bridge, and the amount of

traffic coming in there is only slightly greater than that coming in over Stephenson Avenue and the Seventh Street bridge.

Commissioner BRUNDIGE. If there is nothing further we will now go to the Salt Lake.

(At this point the Commission and counsel proceeded via Fourth Street bridge to the Santa Fe station.)

PASSENGER STATION OF THE ATCHISON, TOPEKA & SANTA FE RAILWAY.

Commissioner BRUNDIGE. Was there any statement to be made here?

(Tracks in rear of Santa Fe passenger station.)

Mr. R. B. BALL (Chief Engineer Santa Fe). The engineering plan for the separation of grades on the First Street viaduct only provides about 150 feet from the river for tracks, cuts off all the tracks lying to the west, and it would be impossible for us to reach the present station grounds unless that abutment was moved farther away from the river to permit more tracks. And when we get down to designing the structure I would like permission to sit in with the Commission's engineer to see if they cannot be moved farther back. If the Santa Fe wanted to utilize that property where that station now exists it could not get to it under the present grade separation plans.

Mr. GORDON. I would like to call attention in this connection to the fact that the order which the Commission made in these cases makes no reference to the

separation of the grades here at First Street. That, I believe, was referred to in some of the conferences and possibly in the reports, and I assume that is what you have in mind, isn't it, Mr. Ball?

Mr. BALL. Yes; but by shoving that farther west it is either going to make a heavier grade approach on First Street or the raising of Santa Fe Avenue and First Street higher. It is going to be quite a problem to get out and still have track room and serve that property where the depot is.

(Tr. 2480-2483.)

* * * * * * *

Commissioner BRUNDIGE. Mr. Gordon, did you desire to make a further statement?

Mr. GORDON. Only this, we have now passed through the Santa Fe passenger station and have had opportunity to view the apparent inadequacy of that to handle the passenger traffic of this road. That is made, of course, in connection with the evidence already in concerning the inadequacy of the passenger station facilities of the Santa Fe in Los Angeles.

Commissioner BRUNDIGE. Do you concede that, Mr. Burks?

Mr. BURKS. I would merely like in that connection to call the attention of the Commission to the fact that the inadequacy of the present passenger facilities of the Santa Fe is due almost entirely to the fact that for a number of years the atmosphere has been so clouded as to preclude, in the exercise of wise judgment, the

installation of facilities which would be in keeping with a city of this size.

(Tr. 2485-2486.)

* * * * * * *

PAUL BURKS. Atchison, Topeka & Santa Fe.

We have adequate room for adequate service and we have an inclination to provide such facilities as the Commission may deem adequate, and that the Commission has conferred on it by the Legislature power to make it. At no time have our facilities been such as to prevent our affording adequate service to the public.

Commissioner BRUNDIGE. Is there anything further? If not, we will now go over to the Salt Lake station.

PASSENGER STATION OF LOS ANGELES & SALT LAKE RAILROAD.

2:15 P. M.

Commissioner BRUNDIGE. Was there a statement to be made here?

Mr. PETTIT. I think Mr. Comstock will make any statement upon behalf of the Salt Lake.

Mr. W. H. COMSTOCK (general manager Salt Lake.) In connection with the room in the upper story of the Arcade for our offices, it is only the intention to move the division offices now quartered in the upstairs of the present depot (indicating Salt Lake Passenger Depot), the general offices in the Pacific Electric Building to remain as they are. And there is ample room, three times the space we have now, in the Arcade.

You have seen our station facilities here. We have been trying for eight or ten years to my knowledge to get a new station. I think the record shows we first bought the Seventh Street property and were not successful in locating a passenger station there, and then we opened negotiations with the Southern Pacific Company for the joint use of the Arcade, and after several months of conferences we closed a contract with them which is before the Commission and has been since 1917, I think. That is about all I want to say.

Mr. PETTIT. It might be pointed out at this time that we have here four tracks in front of the station which prove ample, if not more than ample, for handling the incoming and out-going trains.

Mr. COMSTOCK. In addition to the passenger trains, take care of all the switching which is handled up and down in front of the passenger station. This, of course, will be relieved by the location of the new freight station at Eighth and Alameda.

(Tr. 2488-2489.)

* * * * * * *

Mr. GORDON. I want to call attention to what has been just noticed in connection with the station, that there are no so-called umbrella sheds adjoining the passenger tracks in front of the station; that the passenger waiting rooms and other facilities about the station appear to be small, and in other respects I will say they are apparently inadequate.

Mr. COMSTOCK. I concur.

Mr. STEPHENS. All concur in that, I take it.

Mr. PETTIT. We didn't bring you down to show you what we have but what we have not and need, and right away at that.

(Tr. 2490-2491.)

* * * * * * *

Commissioner BRUNDIGE. Is there anything further? I am going to suggest this, if this is agreeable to you. We desire to view the Salt Lake freight station and the grade crossing situation up here on Aliso Street and then to go to Macy Street and view that, and then from there we will go to Alhambra Street, from Alhambra to North Main Street, North Spring Street, cross the bridge, and to Buena Vista or North Broadway—well, I don't think it is necessary to stop there—and then come down on North Broadway until we reach College and Alameda where you can make any statement. We will pause at each of these places but there will be no getting out of the machines until we get to College and Alameda.

Mr. KARR. Do you want to stop at Aliso Street and see where the proposed Pacific Electric tracks would go up over the Salt Lake and over Aliso Street, overhead?

Commissioner BRUNDIGE. Yes, I think that is desirable.

SALT LAKE FREIGHT STATION.

Mr. KARR. We are standing now just east of the Aliso Street bridge, and the Pacific Electric tracks would proceed east from the Pacific Electric Building,

crossing the river, and come down to grade and run at grade along the Salt Lake tracks on the Salt Lake right of way up to a point 700 feet south of Aliso Street, where the tracks would go up on an elevated, cross the Salt Lake tracks, cross Aliso Street and come down to grade just south of the Brooklyn Bridge. There would be no grade crossing then of the Pacific Electric from the Sixth and Main Street station until you get to the Mission Road, a couple of miles—well, one-third of the way to Pasadena. That is all I want to point out here.

(Tr. 2492-2493.)

* * * * * * *

Mr. BARNARD. I would like to ask if the plan contemplated by the Salt Lake-Pacific Electric and Southern Pacific was carried, whether the Pacific Electric would ever be able to run its four tracks which end right here a block east of us into its terminal?

Mr. KARR. No, we are not contemplating it.

Mr. BARNARD. I was asking whether you would be able to if the necessity should be shown for it in the future years?

Mr. KARR. Well, I think the property would be available if the necessity was there, but we are not contemplating more than two tracks at this time.

Mr. BARNARD. That would involve either going into the river-bed or moving your main freight lines eastward to provide for additional trackage if four tracks were needed on the Pacific Electric.

Mr. KARR. I think that is true. Some rearrangement would have to be made.

(Tr. 2494-2495.)

* * * * * * *

Mr. KARR. Of course, we anticipate that with two tracks, with no grade crossings, that their capacity to do business will be substantially quadrupled, having no interference getting in and out of the station.

Mr. BARNARD. But you have four tracks over here to Oneonta now.

Mr. KARR. The object of those four tracks is to put the express trains or fast trains on the inside, the outside tracks to do the local business, making frequent stops.

Mr. BARNARD. Where would the local business go to get into the city?

Mr. KARR. There would be no local business except at express stops over an elevated. We would put one stop at the Salt Lake-Southern Pacific station and the junction with the Long Beach line perhaps, but it was not contemplated that the street car service would be operated over this elevated. We propose to continue to operate the local service over Aliso Street, Los Angeles Street and Main Street.

Mr. BARNARD. That is what I had thought.

Mr. KARR. Yes.

(Tr. 2495-2496.)

* * * * * * *

Commissioner BRUNDIDGE. All right, gentlemen, we will proceed. (At this point the Commission and counsel proceeded to view the trackage on Alhambra Road, East

of Main Street; thence to North Broadway, crossing North Broadway viaduct, then proceeding on foot, viewing railroad yards, crossing on foot bridge from North Broadway to River Station of Southern Pacific Company.)

RIVER STATION, SOUTHERN PACIFIC COMPANY.

(Tr. 2500.)

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Mr. KARR. Those freight stations are your l. c. l. freight stations just to the south and west here (indicating)?

(Tr. 2502.)

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Mr. WILLIAMS. That is the only station we have in Los Angeles. We have no suburban station.

Mr. GORDON. Apropos of that, of course, we have had opportunity to see this freight yard here very adequately by walking over the foot bridge viaduct which leads from North Broadway over to where we are here now, San Fernando Street, and in the trip we have just taken from the last point of stopping at Macy Street we have had opportunity to see from the machines as we went along a good deal of the track conditions that are referred to in the record and the testimony and the evidence. Mr. Barnard probably could make an explanation of just what that amounted to. Of course, as we came over the bridge there at North

Broadway it was very apparent there how the Santa Fe and Southern Pacific tracks approach at that point. (Tr. 2502.)

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Mr. BARNARD. * * * Mr. Gordon asked me to state something about the route which we had taken from our last stop. Where we stopped practically at the Redondo Street junction of the Yuma line and the San Francisco line, we were just at the north end of the proposed plaza terminal yard. We went from there north, coming back on Main Street, going north on Main Street to and just across the river, went up the east side of the river and back on the North Broadway bridge, south on North Broadway to the point where you got onto this foot bridge across the tracks, so that you have just about driven around this classification yard right in here (indicating).

Mr. GORDON. The point where we turned into Alhambra Road, that unpaved portion where it was quite muddy and where we made the circuit there, we were then looking right down the Southern Pacific main line tracks from Yuma, were we not?

Mr. BARNARD. That is correct. That is the point I wanted to call attention to as being the north end of the plaza terminal yard, and it was because the tracks of all the transcontinental railroads are there, either crossing each other or within a few hundred feet of each other, that their proximity suggested to my mind the treatment of the plaza site, which I had the pleasure of suggesting earlier in your hearings and which

was, I think, used somewhat as a basis of the plan which the Commission adopted.

(Tr. 2504-2505.)

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Commissioner BRUNDIGE. Anything further? We will then go by the Southern Pacific freight station, stopping at the Plaza.

(Tr. 2509.)

PLAZA.

(Tr. 2510.)

* * * * * * *

Mr. KARR. I would like it explained just where we would be with reference to the station now.

Mr. GORDON. It is impossible to say for this reason, that the order as it now stands does not place the station. It defines a large area bounded by certain streets. You undoubtedly have in mind the plans submitted during the conference. I don't think there is anything in the order indicating that the Commission has definitely fixed the station site.

Mr. KARR. Nothing to indicate then whether the entrance to this station would be from Commercial Street or Broadway or from the east side?

Mr. GORDON. No, there is not.

Mr. KARR. In other words there is no order on a station at all except in a general location?

(Tr. 2510.)

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Mr. GORDON. We have a copy of the order here. I am reading now from the order, paragraph 3, page 38 of the printed decision:

"That the location and site of the union passenger station herein referred to best suited to promote public convenience and to secure adequate service and facilities is within that portion of the City of Los Angeles bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue and the Los Angeles River."

You can trace that very readily on a map opposite page 368 of the report.

(Tr. 2511.)

* * * * * *

Mr. GORDON. This site as defined in the order, of course, is large but, as Mr. Mesmer pointed out a few moments ago, it includes a large portion of the city which we saw in passing through which is occupied by a very poor class of construction and improvements, and it would therefore appear available for other uses without as large expense as would be incurred if it were more thoroughly improved.

(Tr. 2511.)

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Mr. GORDON. The Commission will go down on Alameda Street and view such features of the premises as appear between Alameda Street—Alameda and Main down to Fourth Street.

Commissioner BRUNDIGE. Upon the conclusion of that review the matter will stand submitted and the Commission adjourn.

(Tr. 2531.)

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Commissioner BRUNDIGE. Is there anything further, gentlemen? The matter is submitted then.

(Tr. 2532.)

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Agreement
Between
Southern Pacific Railroad Company,
Southern Pacific Company
and
Los Angeles & Salt Lake Railroad Company.

This Agreement, made and entered into this eighteenth day of July, 1917, by and between the Southern Pacific Railroad Company, a corporation, organized and existing under the laws of the State of California, Arizona and New Mexico, party of the first part, its lessee, Southern Pacific Company, a corporation, organized and existing under laws of the State of Kentucky, party of the second part (parties of the first and second parts hereinafter sometimes collectively called "Southern Company") and Los Angeles & Salt Lake Railroad Company, a corporation, created by and existing under the laws of the State of Utah, party of the third part herein sometimes called "Salt Lake Company").

Witnesseth, That:

Whereas, The party of the first part is the owner of and the party of the second part as its lessee is in possession of and operating certain lines of railroad in the City of Los Angeles, County of Los Angeles, State of California; and

Whereas, The third party is the owner of and operates certain lines of railroad in said City of Los Angeles; and

Whereas, The Southern Company desires to procure new and additional lines through parts of said City of Los Angeles, from a point on its existing lines near the

foot of Dayton Avenue, in the vicinity of its present bridge across the Los Angeles River; thence taking a course across the Arroyo Seco on the east side of the Los Angeles River and beyond, and over and along the tracks and property of the Salt Lake Company to Butte Street; thence westerly along the Butte Street line of the Salt Lake Company to a connection with the existing tracks of the Pacific Electric Railway Company on Butte Street, and or of the Southern Company on Alameda Street, together with elevated track connections commencing at points in the vicinity of Sixth and Alameda Streets, running easterly to the Los Angeles River and by bridges across said river to connections with the tracks of the Salt Lake Company; also a proposed joint passenger train car yard to be located on property of the Salt Lake Company; and

WHEREAS, The Salt Lake Company desires to use, in common with the Southern Company, the passenger station and its appurtenances of the Southern Company located in the vicinity of Fifth Street and Central Avenue, in said City of Los Angeles, together with such tracks and other facilities as may be necessary for the operation of engines and passenger train cars of the Salt Lake Company to and from said passenger station; and

WHEREAS, The parties hereto contemplate the ultimate establishment of a joint interchange yard upon the property of the Southern Company situate between Dayton Avenue and Alice Street; and

WHEREAS, In order to provide for the common use, as aforesaid, of the respective facilities mentioned, and the reciprocal exchange of privileges, it will be necessary to purchase and acquire additional real property, to procure franchises and easements, construct additional tracks, bridges, elevated viaducts, subways, interlocking devices, signal systems, telegraph and telephone lines, and all appurtenances:

NOW, THEREFORE, in consideration of the terms, conditions, covenants, promises, agreements and payments to be observed, kept, performed and made by the respective parties hereto it is understood and agreed as follows:

ARTICLE I.

The approximate locations of the properties, the common use of which is desired or contemplated by the parties hereto are shown on the map attached hereto and hereby made a part hereof; said map being identified by the signatures of the respective engineers of the parties hereto; said properties are hereinafter sometimes referred to as "joint facilities". Upon the execution of this agreement, said parties shall forthwith proceed to obtain necessary franchises, rights and real property for the construction and operation of the joint facilities as contemplated by this agreement, including tracks, subways, viaducts, and all other structures and appurtenances as may be advisable or required by lawful authority, and it is understood that all expense in connection therewith, except as herein otherwise provided, shall be borne by the company upon whose property the

same shall be located, but such expense shall be added to and become a part of the cost of the joint facilities for the purpose of arriving at capitalization as hereinafter defined.

ARTICLE II.

SEC. 1. As the first step toward the ultimate development of the entire scheme as herein contemplated it is agreed that the Salt Lake Company shall, at its sole cost and expense and consistent with the provisions of Article I hereof, promptly undertake the construction of, and thereafter diligently prosecute to completion, a complete double track facility from points where the double track switch turn-outs which are to be built for connection with the Southern Company's tracks south of Alhambra Avenue and east of the Los Angeles River intersects the easterly right of way line of the Salt Lake Company, southerly to the north line of Ninth Street; and to that end shall

(a) Change and rearrange existing tracks, structures, and other facilities, and provide such additional tracks, structures and other facilities with all necessary switches, signals, connections and appurtenances of all thereof;

(b) Construct a double track elevated bridge and tracks across the Los Angeles River from the east line of the official bed of the Los Angeles River to a line two hundred (200) feet (more or less) west of the west line thereof, being the southerly curved bridge and structures necessary to be built so as to cross the Los Angeles

River between Sixth and Seventh Streets, to a connection with the elevated structure hereinafter mentioned and to be built by the Southern Company;

(c) Construct necessary double track switch turnouts, up to the easterly boundary line of its right of way for connection with the Southern Company's tracks to be built south of Alhambra Avenue and east of the Los Angeles River;

(d) Construct necessary interlocking plant, to be installed on the easterly side of the Los Angeles River between the northerly and southerly curved bridges across the Los Angeles River to be located between Sixth and Seventh Streets, as herein specified; such plant to be connected with and control all switches within its interlocking limits.

The above described portion of the joint facilities is hereby designated as "Salt Lake Unit One".

The Salt Lake Company hereby grants to the Southern Company, during the life of this agreement, the right and privilege of using, in common with the Salt Lake Company, the said "Salt Lake Unit One" for the operation, by any motive power, thereon and thereover, of its engines, trains and/or cars of every class.

When available for joint use, the Southern Company shall pay as its proportion monthly to the Salt Lake Company, forty per cent (40%) of the entire cost of operation (except train and engine operation), main-

tenance, including repairs, renewals and replacements, of said "Salt Lake Unit One", except that the Southern Company shall pay monthly two-thirds (2/3) of the cost of operation of said interlocking plant.

Sec. 2. Coincident with the undertaking by the Salt Lake Company of said "Salt Lake Unit One", the Southern Company shall, at its sole cost and expense, undertake the construction of, and thereafter diligently prosecute to completion:

(a) A double track elevated structure and tracks from the east line of the official bed of the Los Angeles River, westerly in a location to be hereafter mutually agreed upon, between Sixth and Seventh Streets, to a location near Sixth and Alameda Streets;

(b) Such structures as may be necessary and make such changes in its existing tracks in the southerly end of its passenger station yard, including removal and relocation of buildings and structures to effect a separation of grades in the vicinity of Sixth and Alameda Streets and to connect tracks on the aforesaid elevated structures with the revised trackage facilities in said passenger station yard, and south to connection with tracks in Alameda Street;

(c) Necessary interlocking plant for the control of all switches within the interlocking limits of such plant to be installed in the vicinity of Sixth and Alameda Streets.

The Southern Company hereby grants to the Salt Lake Company the right and privilege during the life of this agreement, of using in common with the Southern Company, for the operation by any motive power, thereon and thereover of its passenger cars (including baggage, mail and/or express cars), passenger trains and/or engines, the aforesaid elevated double track, structures and facilities from and across the Los Angeles River to Sixth and Alameda Streets; thence through and over the passenger terminal grounds and all tracks thereon to the south line of Third Street; also over and along the double track on Alameda Street from the south line of Third Street to about three hundred (300) feet north of Sixth Street, where said double track connects with the south lead of passenger station yard. Said passenger terminal grounds being described as follows:

BEGINNING at the northwest corner of Sixth and Alameda Streets, thence northerly along the west line of Alameda Street, eighteen hundred and ninety (1890) feet (more or less) to the southwest corner of Alameda and Fourth Streets, thence westerly along the south line of Fourth Street, two hundred and sixty (260) feet, thence southerly parallel to the east line of Central Avenue, three hundred and sixty (360) feet, thence westerly parallel to the south line of Fourth Street, one hundred and thirty (130) feet (more or less) to the easterly line of Central Avenue, thence southerly along the easterly line of Central Avenue, eight hundred and seventy (870) feet (more or less) to the northwest corner of Lot Sixteen, Block Fourteen, Wolfskill Orchard

Tract, thence at right angles easterly one hundred (100) feet, thence southerly parallel to Central Avenue, four hundred and fifty (450) feet, (more or less) to the southeast corner of Lot One, Block Fourteen, Wolfskill Orchard Tract, which is the north line of Sixth Street, thence southeast along the northerly line of Sixth Street, three hundred and fifty-two (352) feet (more or less) to the point of beginning.

The above described portion of the joint facilities, together with the Southern Company's passenger station, umbrella sheds and all facilities and appurtenances thereof on said passenger terminal grounds described in the next preceding paragraph, is hereby designated as "Southern Company Unit One".

When available for joint use, the Salt Lake Company shall pay monthly, as its proportion, to the Southern Company, one-third (1/3) of the entire monthly cost of operation (except train and engine operations and the operation of the passenger station and facilities connected therewith described in Section 3 of this Article), maintenance, including repairs, renewals and replacements, of said "Southern Company Unit One".

Sec. 3. The Southern Company hereby grants to the Salt Lake Company the right and priviiege of using, during the life of this agreement, in common with the Southern Company, for its baggage, passenger and mail business, the Southern Company's passenger station, umbrella sheds and all facilities and appurtenances of all thereof on said passenger terminal grounds of South-

ern Company hereinbefore described, together with the right to occupy the second or upper floor of what is known as the south wing of said passenger station building, to be used solely and exclusively for offices of the Salt Lake Company, but reserving unto the Southern Company the exclusive use of the entire third floor of what is known as the north wing of said passenger station building and the fireproof vaults in the basement of the north wing; also the space occupied by the newstand in the main concourse.

The Southern Company agrees that its agents and other employes engaged at said passenger station shall also act as the agents and employes of the Salt Lake Company in the transaction thereat of the passenger, baggage and mail business of the Salt Lake Company. The Southern Company also grants to the Salt Lake Company the right and privilege of handling express business by express companies on and over the passenger terminal grounds, and to that end it is agreed that it will provide, at locations to be mutually agreed upon, necessary tracks upon which express cars shall be placed for the loading and unloading of such express matter.

Sec. 4. It is understood and agreed that all signs and advertising displays of each of the parties hereto, of permanent or unusual character, to be installed in or on said passenger station shall be mutually agreed upon before installation. Suitable space in the waiting room of said station shall be provided for the display of ordinary advertisements and handbills of the parties, such space to be divided between the parties in the

same proportions as the expense of maintenance of said station is divided.

Sec. 5. From and after the commencement of use, the Salt Lake Company shall pay monthly as its proportion to the Southern Company twenty-five (25) per cent of the entire monthly expense of conducting the business at and operating the passenger station and facilities connected therewith described in Section 3 of this Article.

Sec. 6. After completion of the first units as hereinbefore described, the Salt Lake Company shall, at its sole cost and expense, forthwith upon request of the Southern Company undertake and thereafter diligently prosecute to completion, the construction of a complete double track facility from the southerly right of way of the Atchison, Topeka and Santa Fe Railroad near the foot of Avenue 18 and the east line of the bed of the Los Angeles River, southerly to head blocks of the double track switch turn-outs for connection with the Southern Company's tracks to be built south of Alhambra Avenue, and to that end provide:

(a) Additional tracks, structures and other facilities, with all necessary switches, signals, connections and appurtenances of all thereof.

(b) Necessary switch turn-outs up to the easterly boundary line of its right of way for double track connections with the Southern Company's tracks to be built north of Alhambra Avenue and east of the Los Angeles River.

The above described portion of the joint facilities is hereby designated as "Salt Lake Unit Two".

The Salt Lake Company hereby grants to the Southern Company, during the life of this agreement, the right and privilege of using, in common with the Salt Lake Company, the said "Salt Lake Unit Two" for the operation, by any motive power, thereon and thereover of its engines, trains and/or cars of every class.

When available for joint use the Southern Company shall pay monthly, as its proportion, to the Salt Lake Company, fifty-three (53) per cent of the entire monthly cost of operation (except train and engine operation), maintenance, including repairs, renewals and replacements, of the said "Salt Lake Unit Two".

Sec. 7. Coincident with the undertaking by the Salt Lake Company of the said "Salt Lake Unit Two", the Southern Company shall, at its sole cost and expense, undertake and thereafter diligently prosecute to completion, the construction of a complete double track facility and provide such additional tracks, structures and other facilities with all necessary switches, signals, interlocking plants, connections and appurtenances of all thereof:

From the southerly line of the Atchison, Topeka and Santa Fe Railroad right of way near the foot of Avenue 18 and the east line of the official bed of the Los Angeles River, across tracks and said right of way of the Atchison, Topeka and Santa Fe Railroad, northerly along the east side of the official bed of the Los Angeles River, or in the bed of

such river, depending upon the rights that may hereafter be secured, to connections with the tracks of the Southern Company near the foot of Dayton Avenue just north of the Southern Company's bridge across the Los Angeles River.

The above described portion of the joint facilities is hereby designated as "Southern Company Unit Two".

Sec. 8. The Southern Company, at any time within five years from the effective date of this agreement, and upon request of the Salt Lake Company, shall grant to the Salt Lake Company the right and privilege of using, during the life of this agreement, in common with the Southern Company, such tracks and appurtenances, forming part of "Southern Company Unit Two" as may be necessary for the operation, by any motive power, thereon and thereover, of its engines, trains and/or cars, extending from the tracks of the Salt Lake Company at the southerly right of way of the Atchison, Topeka and Santa Fe Railroad at the foot of Avenue 18 to a proposed interchange yard to be located on the property of the Southern Company between Dayton Avenue and Alice Street. In the event the Salt Lake Company exercises its option to join in the common use of such tracks and appurtenances of the Southern Company, then from and after the said interchange yard is available for joint use, the Salt Lake Company shall pay monthly as its proportion to the Southern Company twenty per cent (20%) of the entire cost of operation (except train and engine operation), maintenance, including repairs, renewals and replacements, of said por-

tion of "Southern Company Unit Two" so used in common.

Sec. 9. The Salt Lake Company shall, at its sole cost and expense, forthwith upon request of the Southern Company, undertake and thereafter diligently prosecute to completion, the construction of a single track and (when necessary a double track) facility, and provide such additional tracks, structures and other facilities with all necessary switches, signals, interlocking connections and appurtenances of all thereof, comprising:

(a) A single track from the north line of Hostetter Street, southerly and westerly to a connection with its present Butte Street line;

(b) Necessary switch turn-outs, up to the southerly boundary line of its right of way of the Butte Street Line, for a single track connection with the Southern Company's track near Twenty-Second and Alameda Streets.

(c) When necessary, additional track or tracks or structures or changes in any existing tracks or structures to provide a double track connection from the north line of Ninth Street to connection with the Butte Street line and/or across the Los Angeles River and/or over and along said Butte Street line to its point of connection with the Pacific Electric Railway Company's tracks and/or the tracks of the Southern Company on Alameda Street.

The Salt Lake Company hereby grants to the Southern Company, during the life of this agreement, the

right and privilege of using, in common with the Salt Lake Company, for the operation, by any motive power, thereon and thereover of the Southern Company's engines, trains and/or cars, all of said tracks and structures above mentioned in this Section 9, together with existing tracks and structures forming the Butte Street line of the Salt Lake Company and also the existing tracks and structures forming the double track line of the Salt Lake Company from the north line of Ninth Street to Hostetter Street.

All of the above described tracks and structures forming part of the joint facilities, are hereby designated as "Salt Lake Unit Three".

When available for joint use, the Southern Company shall pay, as its proportion, to the Salt Lake Company, forty-three per cent (43%) of the entire cost of operation (except train and engine operation), maintenance, including repairs, renewals and replacements, of said "Salt Lake Unit Three"; provided, however, the expense of operating interlocking plant at crossing of Atchison, Topeka and Santa Fe Railroad at Butte Street, shall be divided upon a fair and equitable basis.

Sec. 10. All work to be done hereunder by the parties hereto shall be along such lines, and upon such grades, and in accordance with such plans and specifications as shall be mutually agreed upon by the General Managers, or their authorized representatives, of the parties hereto, and to their satisfaction.

Sec. 11. Whenever the following words appear in this agreement, they shall be made to apply in the same sense and with the same meaning as expressed from time to time by the rules and regulations of the Interstate Commerce Commission, or other regulative body having exclusive jurisdiction in such matters to-wit: "operation", "maintenance", "repairs", "renewals" and "replacements".

Sec. 12. It is mutually understood that telegraph and/or telephone service will be necessary for conducting the business of the parties hereto; therefore, it is agreed that either company shall have the right to construct, or have constructed, necessary lines over and along the right of way and premises of the other party; provided, however, that said telegraph and/or telephone lines and their appurtenances shall at all times be installed and maintained at the sole cost and expense of the company owning the same and to the satisfaction of the other party; provided, further, that such line shall be installed under an arrangement to be made by the company desiring such telegraph and/or telephone facilities, with any telegraph company having rights in the premises.

Sec. 13. When any of the aforesaid "Units" of the joint facilities to be constructed by one company shall have been completed to such an extent that it would be available for operation if the other company had likewise completed its portion of the corresponding unit, it shall be deemed "available for joint use" as that term is used in this agreement.

ARTICLE III.

Sec. 1. The Salt Lake Company may elect at any time within five (5) years from the effective date of this agreement to join with the Southern Company in an interchange yard, to be located upon the property now owned by the Southern Company situate between Dayton Avenue and Alice Street, for the exclusive purpose of interchanging cars, and cars and their contents, with the Southern Company; and the Southern Company shall after such election, at its sole cost and expense provide tracks and appurtenances as may be necessary for such interchange yard.

In the event the Salt Lake Company exercises its option, the Southern Company will grant to the Salt Lake Company the right and privilege of using, in common with the Southern Company, said interchange yard.

The Salt Lake Company shall pay monthly to the Southern Company such proportion of the entire cost of operation (except train and engine operations in road service) maintenance, including repairs, renewals and replacements, of said interchange yard, as the number of cars handled therein by the Salt Lake Company during such month bears to the total number of cars handled in said interchange yard for all companies using the same.

The Southern Company reserves the right to admit one or more additional parties to the joint and common use of said interchange yard.

Sec. 2. The Southern Company may elect at any time within five (5) years from the effective date of this

agreement to join with the Salt Lake Company in a passenger train car yard, to be located upon not to exceed thirty (30) acres of the now owned property of the Salt Lake Company, situate south of First Street, north of Seventh Street, east of Los Angeles River, and west of Clarence Street, and the Salt Lake Company shall, after such election, construct, at its sole cost and expense from time to time, upon request of the Southern Company, such tracks and other structures, and provide such facilities, as may be necessary for a passenger train car yard to be used in common by the respective parties hereto, including necessary connections with the other joint facilities, and shall provide thereon such tracks, structures and facilities as may be necessary for the proper handling of the business of the Commissary Department of the Southern Company. In the event the Southern Company exercises its option, the Salt Lake Company will grant to the Southern Company:

(a) The right and privilege of using, in common with the Salt Lake Company, said joint passenger train car yard facilities and structures and tracks connected the same with the other joint facilities.

(b) The right and privilege of using such tracks, (and tracks connecting same with other joint facilities), provided by the Salt Lake Company as aforesaid, for the proper handling of the business of the Commissary Department of the Southern Company.

The Southern Company shall pay monthly, to the Salt Lake Company, such proportion of the entire cost of operation (except train and engine operations in road service), maintenance, including repairs, renewals and replacements, of said passenger train car yard as the number of cars handled therein for the Southern Company during such month bears to the total number of cars handled in said passenger train car yard for all companies using the same; for the tracks, structures and facilities used exclusively by it as aforesaid, the Southern Company shall pay the entire cost of operation (including switching service) and maintenance, including repairs, renewals and replacements.

The Salt Lake Company reserves the right to admit one or more additional parties to joint use of said passenger train car yard, except the exclusive tracks and facilities of the Southern Company.

Sec. 3. It is further understood and agreed, in the event that the Southern Company shall request the Salt Lake Company to construct "Salt Lake Unit Two" and/or "Three", as hereinbefore specified, from and after the time said units are available for joint use, the Southern Company shall pay the rental, and the share of the cost of operation, maintenance and other expenses of said units as in this agreement contemplated.

It is further understood and agreed that in the event the Salt Lake Company shall exercise its option, set forth in Section 8 of Article II, (connection to reach interchange yard), it shall, from and after the time the interchange yard mentioned in Section 1 of this Article III is available for joint use, pay the rental, and the

share of the cost of operation, maintenance and other expenses, as in this agreement contemplated, of the said portion of the joint facilities so described in Section 8 of Article II.

It is further understood and agreed that in the event the options as set forth in Sections 1 and/or 2 of this Article III be exercised, then the party exercising its option shall, from and after the time the said interchange yard or the said passenger train car yard, as the case may be, is available for joint use, pay the rental, and the share of the cost of operation, maintenance and other expenses, as in this agreement contemplated, of said interchange yard and/or said passenger train car yard.

ARTICLE IV.

Sec. 1. "Capitalization" (as used in this agreement), upon which rental is to be based, shall be computed as follows:

To the agreed upon values of the existing facilities to be used jointly (exclusive of real property owned by or held for either Company or any company controlled by it, April 26th, 1916) shall be added the costs of any additional real property, franchises, tracks, structures and facilities reasonably necessary for joint operations as herein contemplated, plus any and all costs to the owning company (except expenses under Article XIII, reimbursed to the Salt Lake Company by the Southern Company, and/or Pacific Electric Railway Company) in connection with any changes, removals, and rearrangements of existing tracks, buildings, other structures and

facilities, irrespective of whether such items be chargeable to capital account or operating expense, as defined by the Interstate Commerce Classifications or as prescribed by other regulative bodies having jurisdiction in such matters, plus interest at the rate prescribed on capitalization on all of the said costs from dates of expenditures to the end of the construction period. The amount of the capitalization as above determined, and upon which interest rental is to be based shall continue in effect during the life of this agreement; except that such determined amount shall be increased or decreased in accordance with the Interstate Commerce Classifications or as prescribed by other regulative bodies having jurisdiction in such matters, by the value of any property or facility added to or eliminated from the joint facilities.

For the purpose of fixing and determining the "agreed upon value of existing facilities", above mentioned, the following bases shall be adopted:

(a) The cost of any track, building, other structure or facility, if the same can be ascertained;

(b) Any track, building, other structure or facility, the cost of which cannot be ascertained, shall be valued at the cost of reproduction in kind as of the date the portion of the joint facility of which it forms a part is available for joint use. Such cost or costs of reproduction in kind shall be mutually agreed upon between the parties hereto.

As portions of the joint facilities become available for joint use from time to time, schedules shall be compiled setting forth in detail the capitalization of such joint facilities, determined in the manner above provided, which schedules shall be identified by the signatures of the Engineers of the respective parties and the same shall be attached to this agreement, and thereafter form a part hereof.

For the purpose of determining the value of any realty to be included in the capitalization of the interchange yard, and/or passenger train car yard, mentioned in Article III hereof, such realty as is owned by the Company, providing such facility at the date of this agreement, shall be appraised as of the date on which the facility is available for joint use, at a fair and reasonable value.

Sec. 2. The Southern Company agrees to pay, monthly, as rentals:

(a) When and after the "Salt Lake Unit One" is available for joint use, one-twelfth (1/12) of two-thirds (2/3) of five per cent (5%) on the capitalization of that portion of the joint facilities situate between the southerly line of First Street and the intersection of the easterly right of way line of the Salt Lake Company with the double track switch turn-outs for connections with the Southern Company's tracks to be built south of Alhambra Avenue.

(b) When and after "Salt Lake Unit One" is available for joint use, one-twelfth (1/12) of three-

fourths (3/4) of five per cent (5%) on the capitalization of that portion of the joint facilities situate between the south line of First Street and the intersection of the easterly line of the official bed of the Los Angeles River with the proposed northerly curved bridge situate between Sixth and Seventh Streets;

(c) When and after "Salt Lake Unit One" is available for joint use, and until such time as "Salt Lake Unit Three" is available for joint use, one-twelfth (1/12) of one-fifth (1/5) of five per cent (5%) on the capitalization of that part of the joint facilities situate between the head blocks of the switch turn-outs leading to the said northerly bridge and the north line of Seventh Street; also the southerly double track elevated bridge across the Los Angeles River, to a connection with the said elevated structure to be built by the Southern Company west of said river; after "Salt Lake Unit Three" is available for joint use, the percentage shall be one-twelfth (1/12) of one-fourth (1/4) of five per cent (5%);

(d) When and after "Salt Lake Unit One" is available for joint use, one-twelfth (1/12) of two-thirds (2/3) of five per cent (5%) on the capitalization of the interlocking plant situate on the east side of the Los Angeles River, between Sixth and Seventh Streets;

(e) When and after "Salt Lake Unit Three" is available for joint use, one-twelfth (1/12) of

one-fifth (1/5) of five per cent (5%) on the capitalization of that part of the joint facilities situate between the northerly line of Seventh Street and the southerly line of Hostetter Street;

(f) When and after "Salt Lake Unit Three" is available for joint use, one-twelfth (1/12) of four-fifths (4/5) of five per cent (5%) on the capitalization of that portion of the joint facilities situate between the southerly line of Hostetter Street and the connection with the so-called Butte Street line;

(g) When and after "Salt Lake Unit Three" is available for joint use, one-twelfth (1/12) of one-third (1/3) of five per cent (5%) on the capitalization of that portion of the Butte Street line extending from the connection described in subdivision (a) of Section 9 of Article II of this agreement, to a connection with the Pacific Electric Railway Company's tracks and/or the tracks of the Southern Company on Alameda Street, as the case may be;

(h) When and after "Salt Lake Unit Two" is available for joint use, one-twelfth (1/12) of one-half (1/2) of five per cent (5%) on the capitalization of said unit; except, however, that upon the capitalization of the second track structure forming part of said "Salt Lake Unit Two" extending from the head blocks of the double track switch turn-outs for connection with the Southern Company's tracks south of

Alhambra Avenue and east of the Los Angeles River, to the head blocks of the double track switch turn-outs for connection with the Southern Company's tracks north of Alhambra Avenue and east of the Los Angeles River, the percentage shall be one-twelfth (1/12) of two-thirds (2/3) of five per cent (5%);

(i) When and after the passenger train car yard described in Section 2 of Article III herein shall be available for joint use, one-twelfth (1/12) of one-half (1/2) of five per cent (5%) of the capitalization (which capitalization shall include the value of all realty, to be determined in the manner hereinbefore provided) of that portion thereof used jointly; and on that portion thereof used exclusively by the Southern Company the percentage shall be one-twelfth (1/12) of five per cent (5%) on the capitalization thereof (which capitalization shall include the value of the realty to be determined in the manner hereinbefore provided).

Sec. 3. The Salt Lake Company agrees to pay monthly, as rentals:

(a) When and after "Southern Company Unit One" is available for joint use, one-twelfth (1/12) of one-third (1/3) of five per cent (5%) on the capitalization of said unit;

(b) When and after the said interchange yard to be located between Dayton Avenue and Alice Street, and "Southern Company Unit Two" are available for joint use, one-twelfth (1/12)

of one-fifth (1/5) of five per cent (5%) on the capitalization of that part of said "Southern Company Unit Two" as may be necessary to reach said interchange yard;

(c) When and after "Southern Company Unit Two" and the said interchange yard to be located between Dayton Avenue and Alice Street are available for joint use, one twelfth (1/12) of one-half (1/2) of five per cent (5%) of the capitalization (which capitalization shall include the value of all realty to be determined in the manner hereinbefore provided) of said interchange yard.

Sec. 4. In the event the Southern Company admits one or more additional railroads to the common use of said interchange yard, or in the event the Salt Lake Company admits one or more additional railroads to the common use of said passenger train car yard, then during the time such other railroads shall use the said interchange yard or the said passenger train car yard, as the case may be, the rentals provided in subdivision (i) of Section 2 of this Article, and subdivision (c) of Section 3 of this Article, shall be readjusted, and the parties hereto shall pay such proportion of said five per cent (5%) as one bears to the entire number of railroads entitled to the use of said interchange yard or the said passenger train car yard, as the case may be.

Sec. 5. It is understood and agreed that in consideration of the reciprocal privileges granted by the re-

spective parties hereto, that capitalization as hereinbefore defined (except as expressly otherwise provided herein) shall never include the value of any real property owned by any of the parties hereto, or held by any person, firm or corporation controlled by any of said parties, and held for the use and benefit of any of the parties hereto, as of April 26, 1916.

Sec. 6. As long as the present method of assessing taxes to railroad corporations in the State of California, on gross revenues, is in effect, it is mutually agreed that no charge shall be made by any party hereto to another for taxes on account of real property and facilities owned. Should any change be made in the present method of taxation so that any of the facilities and/or real property forming a part of joint facilities shall be directly assessed for taxation, then and in such event the taxes on such real property and/or facilities shall be apportioned between the parties hereto on the basis on which they pay rentals.

Should any change be made in the method of assessing and taxing railroads so that the foregoing provisions of this Section 6 shall not be fairly operative or applicable, then in lieu thereof, the parties agree to share in the payment of all taxes equitably assessed against or attributable to the joint facilities on a fair and just basis.

All premiums for insurance (except employes' bonds) and all assessments legally levied against the joint facilities, except taxes above mentioned, shall be apportioned on the bases of percentages prescribed for either

capitalization or maintenance expenses as the case may be.

Sec. 7. No depreciation or structures jointly used under this agreement shall be currently accrued and set up on the books unless required so to do by rules of the Interstate Commerce Commission, or other authorized legal authority; but if such depreciation is required to be currently accrued and set up on the books of the parties, it shall be at a rate agreed upon and shall be apportioned and borne in accordance with the following paragraph:

Loss on jointly used structures when retired and replaced, or retired and not replaced, from time to time during the contract period, shall be apportioned to and borne by the parties hereto on the basis governing the distribution of the expense of maintenance prevailing at the time of such retirement.

Sec. 8. At any termination of this agreement, an appraisement of the then existing structures that have been jointly used hereunder shall be made, for the purpose of determining (a) the loss of structures that will be retired and abandoned by reason of termination of this agreement, and (b) accrued depreciation on structures that are not to be retired from service by reason of termination of this agreement, and the loss, if any, so determined shall be apportioned to and borne by the parties hereto on the basis governing the distribution of expense of maintenance in effect at the termination of this agreement. Such appraisement shall take into consideration any deprecia-

tion previously set up and adjusted against the structures involved.

ARTICLE V.

SEC. 1. The actual cost of any work of construction, operation, maintenance, repairs, renewals and replacements of the joint facilities shall include:

(a) On all items of labor, including wages of foremen, ten per cent (10%) for supervision, accounting and the cost of such tools as may be used by extra or floating gangs.

(b) Cost at company store-house, including freight charges provided in paragraph (d), of tools assigned to regular section gangs and other joint employes.

(c) An equitable rental charge for day of twenty-four (24) hours or fraction thereof for road equipment and for the temporary use of special tools or appliances which individually cost $300.00 or over; such rental charge to be based on rates to be agreed upon from time to time and which shall be uniform as between the companies.

(d) An amount computed at one-half cent (½c) per ton per mile to cover transportation of material, tools and supplies over the lines of railway of the party upon whose facilities the material, tools and supplies are used; also two and one-half cents (2½c) per unit of equipment per mile for transportation of work

equipment, including tools and employes therein.

(e) On material not passing through the store house an amount equal to the actual handling charge incurred for material used.

(f) On material passing through the store house, agreed percentages to cover store house expense.

Sec. 2. Each of the items enumerated in subdivisions (a), (b), (c), (d), (e) and (f) of Section 1 of this Article V, shall obtain until changed by the Interstate Commerce Commission or other regulative bodies having jurisdiction in such matters.

Sec. 3. All bills rendered hereunder by one party to the other shall be promptly paid as rendered, unless grossly in error, necessary corrections to be made in subsequent bills. So much of the books, accounts and records of each party as relate to the subject matters of this agreement shall at all reasonable times be open to inspection by the proper officers and agents of the other parties hereto.

Article VI.

Sec. 1. The rentals as set forth in Sections 2 and 3 of Article IV shall be in effect from the times specified until the expiration of five (5) years from the date this agreement becomes effective. At the end of said five (5) year period and thereafter at the end of each succeeding five (5) year period, such rentals (except the rental for the passenger train car yard as men-

tioned in subdivision (i) of said Section 2, and the rental for the interchange yard mentioned in subdivision (c) of said Section 3, shall be readjusted on the following bases:

(a) For the passenger station, umbrella sheds, passenger subways and all facilities and appurtenances of all thereof (except tracks) on said passenger terminal grounds hereinbefore specifically described in Section 2 of Article II hereof, on the basis of the number of tickets sold at Los Angeles by the parties hereto or for the parties hereto during the preceding twelve (12) months;

(b) For the entire joint facilities, other than as described in subdivision (a) of this section, and other than the said interchange yard and said passenger train car yard, on the basis of the number of cars handled (internal movement in said passenger terminal grounds not included) over the various sections as outlined in Article IV hereof;

In counting cars:

(c) Each car moving into or out of said passenger terminal grounds shall be counted once, but cars moving into or out of said passenger terminal grounds over tracks not jointly used shall not be counted.

(d) Each car moving over each of the other various sections as outlined in Article IV hereof, shall be counted once:

For the purposes of paragraphs (c) and (d) of this section, each engine or motor car to be counted as two cars; switch engines and engines, cars and equipment engaged in work, train service on the joint facilities not to be counted.

Such counting of cars shall be for such duration and at such time or times as may be equitable and mutually agreed upon. Provided, however, until such time as an additional party or parties shall be admitted to the use of the joint facilities, with the exception of said passenger train car yard and said interchange yard, that with respect to any section (set forth in Article IV hereof) of said facilities where the rentals recited in said Article IV for the first five (5) year period, stipulate that any party shall pay to the other as rental less than one-half (1/2) of five per cent (5%) per annum on the capitalization of the other party's facilities, the rentals, as to such section, shall never be less than the rentals specified in Article IV for the first five (5) year period, nor more than one-half (1/2) of five per cent (5%) per annum; and, provided further, until such time as an additional party or parties shall be admitted to the use of the joint facilities, with the exception of said passenger train car yard and said interchange yard, that with respect to any section (set forth in Article IV hereof) of said facilities where the rentals recited in said Article IV for the first five (5) year period stipulate that any party shall pay to the other as rental more than one-half (1/2) of five per cent (5%) per annum on the capitalization of the other party's facilities, the rentals

as to such sections shall never be less than one-half (1/2) of five per cent (5%) per annum, nor more than the rentals specified for the first five (5) year period.

It is expressly agreed that the rate of interest hereinabove specified shall remain in effect at five per cent (5%) as aforesaid until the expiration of ten (10) years from the date this agreement becomes effective, and thereafter, at the end of each ten (10) year period, the rate of interest, may upon demand of either party, be subject to change to a rate then fair and equitable.

Sec. 2. The bases for division of expense of operation, maintenance, including repairs, renewals and replacements, as hereinbefore in Article II provided, shall continue in effect until such time as either of the parties shall demand a readjustment, then such readjustment shall be made on the basis of use, and thereafter readjustment on such basis of use shall be made from time to time on demand of either party; provided, however, that such readjusted bases shall remain in effect for a period of at least one (1) year and shall not be retroactive, and provided, further, that the Salt Lake Company shall never pay less than twenty-five per cent (25%) of the entire monthly cost and expense of conducting the business at and operating the passenger station and facilities connected therewith described in Section 3 of Article II hereof, but the said minimum of twenty-five per cent (25%) shall not apply if any additional parties (other than Pacific Electric Railway Company) are admitted to use of said station. The "bases of use" as in this section specified shall be the same as the bases de-

scribed in subdivisions (a) and (b) of Section 1, of this Article VI, but shall be applied to the districts described in Article II for division of maintenance and operating expenses.

Sec. 3. It is understood and agreed that the owning company reserves the right to admit any other railroad company or companies to the use of any of its property forming a part of the joint facilities; provided, however, that such admission will not unreasonably interfere with the use of the joint facilities or any part thereof by the parties hereto. In event of such admission the other party hereto shall pay as its proportion of the entire cost of operation (except as herewith otherwise provided), maintenance, including repairs, renewals and replacements, of said facilities such proportion as the total number of its cars handled bears to the total number of cars handled. Any rental derived from any other railroad company admitted to the joint use of any of the owning company's property shall be apportioned to the parties hereto on a fair and equitable basis. It being understood, however, that rentals accruing from any admitted company from real property owned by or held for either the Salt Lake Company or the Southern Company on April 26, 1916, shall be retained by the company owning such realty or for whom the same is held. Should the Southern Company at any time or times grant the Pacific Electric Railway Company, its successors and assigns, the rights and privilege of using, in common, the Southern Company's passenger station, umbrella sheds and any or all facilities and appurtenances of

any or all thereof on said passenger terminal grounds, there shall be no readjustment or reduction on account thereof in the rentals; but the Pacific Electric Railway Company shall pay a fair and equitable share of the cost of conducting the business in the passenger station, together with a reasonable share of the expense of maintenance and operation of such joint tracks and other joint facilities upon the said passenger terminal grounds as are actually used by it, subject to the provisions of Section 2 hereof.

Sec. 4. In case either of the owning companies shall hereafter admit any other company or companies to the common use of the joint facilities, or any part thereof, under some arrangement or agreement to which the other party hereto is not a party, then the owning company shall require of such other company or companies so admitted a covenant or obligation to protect the other party hereto against loss or damage, at least to the same extent as the owning company may protect itself under its agreement with such other company or companies, and if the owning company shall fail or neglect to secure from such other company or companies so admitted such covenant or obligation, then the owning company shall be deemed to have itself assumed such an obligation in favor of the other party hereto which it should have secured as above provided from such other company or companies so admitted, but under such circumstances it is understood that the other party hereto shall and hereby undertakes to assume a similar responsibility to such other railway company or companies so admitted as may be as-

sumed by the owning company, insofar as the other party hereto is at fault, and the other party hereto shall and hereby undertakes to indemnify and hold harmless the owning company from and against liability for loss or damage for which the other party hereto is responsible.

Article VII.

Sec. 1. Either company may, from time to time, make such changes in or additions to, or betterments of any part of the joint facilities owned by it as it shall deem necessary, or as shall be required by lawful authority, and either party will, on request of the other, make such changes in, or additions to, or betterments of any part of the joint facilities owned by it as shall be necessary, and all such changes or additions or betterments shall automatically fall under the terms and conditions of this agreement and the capitalization shall be adjusted as specified in Section 1 of Article IV; provided, however, if the owning company shall have made any change in, or addition to, or betterment, and the other party shall consider the same unnecessary or undesirable for safe or economical operation of the joint facilities, then upon written request the question of such necessity or desirability (except when same shall be required by lawful authority) shall be submitted to arbitration, and if it shall be determined by arbitration that the same were not necessary or desirable as aforesaid, the other party shall not be required to pay any rental charge therefor until such other party shall voluntarily use the same, or until because of changed conditions, the same shall

be determined as necessary or desirable. Provided further that in the event the other party shall request the owning company to make any changes in, or additions to, or betterments of the joint facilities, and such owning company does not deem same to be necessary or desirable for the joint use of the parties hereto and the safe or economical operation of the joint facilities, then and in that event the question of such necessity or desirability shall first be submitted to arbitration, and if it shall be determined by arbitration that the same are not necessary or desirable for joint use, as aforesaid, then the owning company shall nevertheless at the request of the other party make such changes, additions or betterments, and the party requesting same shall pay to the owning company monthly one-twelfth (1/12) of the annual interest on the cost thereof, and all expenses of maintenance and operation connected therewith, until or unless the owning company shall use the same, whereupon the same shall thereafter be deemed and treated as any other change, addition or betterment made for the joint use of the parties hereto; provided further, if any change, addition or betterment in the joint facilities is necessary due to change by one of the parties hereto in the form of motive power other than steam, the party undertaking to use such motive power shall have the right to do so and the necessary changes, additions or betterments shall be made by either or both of the parties concerned, as may be required, without recourse to arbitration, but the cost thereof shall not be added to the capitalization upon which the other party hereto is

to pay interest, nor shall it entail any other charge or liability upon such other party, unless and until such other party elects to use such facilities.

Sec. 2. Nothing herein contained shall be deemed to permit or allow either company the right or privilege of giving service to any industry located upon the rails of the other company, or of participating in any revenues from rentals accruing from tenants other than railroad companies occupying or enjoying the use or possession of any property of the other; provided, however, that all net revenues derived or net losses suffered from the operation of the passenger station dining room, as well as from any other facility except newsstand and taxicab concessions which are now or may hereafter be installed as a part of the joint facilities, for passenger purposes, shall be apportioned between the Salt Lake Company and the Southern Company upon the same basis as the cost of operating the passenger station is divided.

Article VIII.

Sec. 1. The joint facilities shall be under the exclusive direction and control of the owning company for operation and maintenance, and the owning company shall maintain and keep its facilities in reasonable repair and reasonably suitable for the combined business of the parties hereto; neither party shall, by reason of any defect in any of the roadways, tracks, bridges, elevated structures, or any other structures or appliances, of, or pertaining to, the joint facilities, or by reason of the failure of the owning company to

repair such defect, have or make against the owning company any claim or demand for any loss, damage or injury whatsoever, arising from such defect, neglect or failure; but in case the owning company shall fail to repair any such defect within a reasonable time after the other company shall have given to the owning company written notice, specifying the defect and requesting that it be repaired, then the company giving such notice shall have the right to make the necessary repairs, and the cost thereof shall be apportioned as in this agreement provided.

Sec. 2. The Southern Company and the Salt Lake Company shall from time to time promulgate such reasonable rules and regulations governing their respective facilities as will be consistent for proper, expeditious, economical and safe operations of the engines, trains and/or cars of the parties hereto thereover; such rules and regulations shall be just and fair to both parties and the officers and employes engaged in the operation or maintenance of the joint facilities or any part thereof shall attend to the business of each company without preference to the other and no such officer or employe shall solicit business competitive between the parties hereto. All trains shall be given equal dispatch according to their class.

Any employe in passenger station service shall be removed from joint service upon written request of the Salt Lake Company; any other employe shall be removed, for cause only, from joint service upon written request of either party hereto.

Sec. 3. All labor required in the construction, maintenance, repairs, renewals and replacements and operation (other than train and engine operations in road service) of said joint facilities, shall be employed by and be under the sole supervision and control of the company owning the property on which such labor is performed, but each of the parties hereto shall furnish at its own cost and expense all tickets, books, blanks and other material and supplies necessary and requisite in the handling of its clerical business in said passenger station and for use elsewhere on the joint facilities.

Sec. 4. Employes of the respective parties hereto engaged in construction, maintenance, repairs, renewals, replacements or operation (other than train and engine operations in road service) of the joint facilities, shall for the purposes of this agreement be deemed the joint employes of the Southern Company and the Salt Lake Company; provided, however, that any such employe of either party while engaged in performing work of any kind or character solely for the other party shall be deemed the sole employe of such other party while performing such work.

Sec. 5. All loss, damage or injury to persons or property in connection with construction, maintenance, repairs, renewals, replacements and/or operations (including switch engines and engines, cars and equipment engaged in service of the joint facilities, but excluding other train and engine operations) of any of the aforesaid tracks, structures and facilities of either

company from any cause, except as herein otherwise provided, shall be deemed an expense of such construction, maintenance, repairs, renewals, replacements and/or operations, as the case may be, and apportioned to the respective companies as hereinbefore provided.

ARTICLE IX.

Either party may use said passenger terminal for any kind or character of passenger traffic in which it is now engaged and for any other kind or character of passenger traffic; provided, however, that if such other kind or character of passenger traffic unreasonably interferes with or restricts the use of said terminal by the other party, any enlargement of the terminal facilities necessary or required thereby shall be provided by the owning company and the rental therefor, and maintenance and operating expenses on account thereof, shall be paid as herein provided with respect to other additions and betterments jointly or exclusively used as the case may be.

ARTICLE X.

In order to define method of interchange of, and responsibility for loss of or damage to baggage, express or mail as between the parties hereto, it is understood and agreed as follows:

(a) All baggage and mail destined to points on or reached by or via the line of railway of the receiving company arriving at said passenger terminal grounds in trains of the delivering company and placed or stored in or upon said

passenger station buildings or platforms shall be deemed to be in the custody of the receiving company from the time it is so placed or stored;

(b) All baggage and mail destined to points on or reached by or via the line of railway of the receiving company arriving at said passenger terminal grounds in trains of the delivering company and which is not placed or stored in or upon said passenger station buildings or platforms, shall be deemed to be in the custody of delivering company until loaded into cars of the receiving company or until receipted for by the receiving company to the delivering company.

(c) All baggage, mail and express which is the exclusive business of any company hereto and is not transferred between the parties hereto shall be considered in such party's exclusive possession and custody and no responsibility whatsoever shall attach to the other company;

(d) In the event of loss or theft of, or damage to, any such baggage, mail or express while in or on facilities on said passenger terminal grounds the party hereto in whose possession and custody the same may be at the time of such loss, theft or damage shall assume all responsibility therefor and hold the other party hereto harmless therefrom, except as herein otherwise provided.

ARTICLE XI.

Sec. 1. The Salt Lake Company shall perform all switching in the said passenger train car yard if and when established.

Sec. 2. The Southern Company shall perform all switching in said passenger terminal grounds, and to and from (but not in) the Salt Lake Company's present coach yard and said passenger train car yard if and when established; provided, however, road engines may handle their trains into and/or out of said passenger terminal grounds.

Sec. 3. The cost of switching service performed by switch engines shall be apportioned on the basis of cars handled for the respective companies; each car movement in or out of the said passenger terminal grounds handled by switch engines to be counted as one car for the purpose of this section only. Provided, however, that each company shall pay to the other company not less than twenty-five per cent (25%) of the total cost of such switching service provided for the parties hereto by such other company. Said minimum of twenty-five per cent (25%) shall not apply if any additional parties (except Pacific Electric Railway Company) are admitted to the use of said facilities. Switch engines and all employes engaged in said switching service shall be considered:

(a) Sole Salt Lake Company equipment and employes when handling exclusive trains and/or cars of Salt Lake Company;

(b) Sole Southern Company equipment and employes when handling exclusive trains and/or cars of the Southern Company.

(c) Joint equipment and employes of both companies when handling, in the same movement, trains, and/or cars of both companies.

Sec. 4. When the equipment, trains and/or cars of both companies are handled in the same movement, each company's cars to be counted against the company for whom such equipment is handled.

Article XII.

Sec. 1. The term "Loss and Damage" as used in this Article relates to loss or damage arising upon or adjacent to the joint facilities and embraces all losses and damages growing out of the death of or injury to persons and all losses and damages growing out of loss of or damage to property, including property belonging to any of the parties hereto, and also embraces all costs and expenses incident to any such losses or damages. In respect to questions of liability, none of the joint facilities nor the work trains or work equipment of any party while performing work on the joint facilities shall be deemed the exclusive property of any party.

The term "joint employes" as used in this section includes all officers and all other employes while actually engaged in the management, maintenance or operation of any part of the joint facilities, but it shall not include any such officer or employe during such time as he is performing any service for or on behalf of or

in respect to the use of the joint facilities solely for one of the parties; when so employed such officer or employe shall be deemed for the time being the sole employe of the party for whom or in whose behalf or in respect to whose use of the joint facilities such service is being performed.

(a) Loss or damage due to the negligence or wrongful act or omission of sole employes of the one party, or

(b) to the concurring negligence or wrongful act or omission of joint employes engaged in service solely for the one party, and of sole employes of the one party, or

(c) to the failure or defect of the exclusive equipment or appliances of the one party,

shall be borne by the party whose sole employes or whose exclusive equipment or appliances so caused such loss or damage.

(d) Loss or damage, due to the concurring negligence or wrongful acts or omissions of the sole employes of the one party and of the sole employes of the other party, or

(e) to the concurring negligence or wrongful acts or omissions of joint employes and of sole employes of the one party and of the sole employes of the other party,

shall be borne equally by the parties, except that each party shall bear all such loss or damage in respect to its own exclusive property (other than joint facilities and joint switch engines) or property in its custody or

upon its cars, and as to its sole employes, passengers or persons upon its locomotives, cars or trains.

(f) Loss or damage due to the negligence or wrongful act or omission of joint employes, or

(g) to the failure or defect of any part of the joint facilities, or the work equipment or switch locomotives of any party performing service upon or in respect to the joint facilities, or

(h) to unknown causes, or

(i) to the acts of third persons not in the employ or under the control of either party

shall be borne by each party as to its own exclusive property (other than joint facilities and joint switch engines) or property in its custody or upon its cars, and as to its sole employes, passengers or persons upon its locomotives, cars or trains, while as to other persons and their property and as to joint employes, joint facilities, and joint switch engines, and as to work trains or work equipment of any of the parties while performing work upon or in respect to the joint facilities, such loss or damage shall be deemed an expense of operation and maintenance and shall be divided between the parties in the manner hereinbefore prescribed.

Sec. 2. Each party who may be liable for or be required hereunder to bear any loss or damage shall and will indemnify and save harmless the other party from such loss or damage and against the payment of and liability for such loss or damage.

Sec. 3. If any suit shall be brought against either or both parties, and any judgment shall be recovered which one party shall be compelled to pay and the other party shall, under the provisions of this agreement, be solely liable therefor, then such other party shall on demand promptly repay to the party paying the same, any moneys which it (the party paying the same) may have paid or been required to pay whether in the way of damages, costs, fees or other expenses; and, if the liability in any such case or cases is joint as between the parties, the party paying the same shall be reimbursed to the extent and in the proportion that the other party hereto may be required to bear or participate in such liability as hereinabove provided.

Sec. 4. Neither party shall be concluded by any judgment at law or equity against the other unless it has had reasonable notice from such other requiring it to appear in an action or suit and make defense thereto for its own account or jointly with the other party. If such notice shall have been given by either party to the other and the party receiving the same shall have failed to appear and make defense, it shall be concluded by the judgment or the decree in said suit.

Sec. 5. Neither party hereto shall voluntarily, except to meet an emergency, make settlement of any claim in excess of two hundred dollars ($200.00) for loss, damage or injury, which would be chargeable to the joint account or would be apportioned between the parties hereto, without the consent of the other party hereto having first been obtained in writing; the party making

settlement of any claims shall procure from each claimant a valid release or releases of all parties hereto from liability in the premises.

ARTICLE XIII.

Sec. 1. The Salt Lake Company, in consideration of the privileges and benefits accruing to it by virtue of this agreement, hereby grants to the Southern Company, for the sole use of the Pacific Electric Railway Company, its successors and assigns, without rental therefor, an easement during the life of this agreement, (with privilege of renewal by payment of a fair and equitable consideration in the form of annual rental) for a right of way of sufficient width not exceeding fifty (50) feet, for the construction, maintenance and operation except by steam, of a double track railway, with necessary track crossings, pole line construction, telegraph and telephone lines and other necessary track appurtenances, over the property now owned by the Salt Lake Company from Aliso Street southerly along the easterly line of the official bed of the Los Angeles River, to the northerly curved bridge to be built by the Southern Company as provided in Section 2 of Article II hereof; provided, however, that the said easement is granted upon the conditions,

(a) that the construction of said railway shall be commenced in good faith within five (5) years from the effective date of this agreement, and thereafter prosecuted with reasonable diligence to completion for operation; and

(b) that the construction, operation and maintenance of said railway, with its adjuncts and appurtenances, shall be at the sole cost and expense of the said Southern Company and/or said Pacific Electric Railway Company; it being understood that any expense of operating and maintaining interlocking towers shall be divided upon a fair and equitable basis to be hereafter agreed upon, among the companies using the same,

(c) that the necessary franchises, permits and privileges for the joint facilities in the location east of right of way as hereinafter described, can be obtained.

Sec. 2. It is understood and agreed that if said construction shall not be commenced within the time, or prosecuted in the manner, above specified, or in the event that said right of way should be abandoned at any time by said Pacific Electric Railway Company, its successors or assigns, then and in either of such events all rights of said Southern Company and of the said Pacific Electric Railway Company, their successors and assigns, in and to said easement shall cease and determine, and title thereto shall revert to and revest in the Salt Lake Company. In case of such reversion, the Pacific Electric Railway Company, its successors and assigns, shall have the right to remove any and all of its tracks and other appurtenances placed on said right of way, and shall remove the same within six (6) months after written notice so to do; failing in which such tracks and other

appurtenances shall become and remain the sole property of the Salt Lake Company.

Sec. 3. It is further understood and agreed that if at the time the Salt Lake Company is prepared to commence the construction of that part of "Salt Lake Unit One" extending from Aliso Street to Ninth Street, the Southern Company or the Pacific Electric Railway Company shall not have determined whether or not the said railway is to be constructed upon the said right of way hereinbefore granted, then the Salt Lake Company may construct said portion of said "Salt Lake Unit One" upon the said right of way; and if thereafter, within the time hereinbefore mentioned, the Southern Company, or the Pacific Electric Railway Company, shall notify the Salt Lake Company of the intention to construct said railway, then the Salt Lake Company shall forthwith proceed to construct and thereafter diligently prosecute to completion, a double track facility for the use of the parties hereto on a location situate easterly of and adjacent to said right of way and to that end shall make all necessary removals or rearrangements of tracks, buildings and other structures (including viaducts) and facilities, including joint facilities theretofore constructed on said right of way, and all facilities exclusively used by the Salt Lake Company, so as to provide for the unobstructed use of the latter by the Pacific Electric Railway, its successors and assigns; and construct such additional tracks, buildings; and other structures and facilities as may be necessary, in order to provide a complete double track facility for

the use of the parties hereto east of said right of way. It is further understood and agreed that until such rearrangements are completed, and said portion of the joint facilities in the new location is available for joint use, the Southern Company, or the Pacific Electric Railway Company, shall not be entitled to commence the construction of said railway on said right of way if such construction will materially interfere with the construction or operation of said joint facilities in said new location. It is further understood and agreed that the Southern Company shall, and it hereby agrees to, pay to the Salt Lake Company, within a reasonable time after presentation of bills therefor, all costs and expenses incurred by the Salt Lake Company in making such necessary removals or rearrangements, including the excess cost of raising and extending the Fourth Street viaduct as hereinafter mentioned, and in addition the amount of the capitalization (determined in the manner in Article IV of this agreement provided) of any portion of the joint facilities remaining upon said right of way, and which cannot be reasonably removed (any portion of the joint facilities remaining upon said right of way which can be reasonably removed and which can be utilized for said railway may be acquired by the Southern Company or the Pacific Electric Railway Company upon payment to the Salt Lake Company of the reasonable value thereof, to be mutually agreed upon by the parties hereto); and also the excess cost of such construction of said portion of "Salt Lake Unit One" upon such location easterly of said right of way

over and above what the cost would have been of the construction of the same upon the said right of way.

Sec. 4. It is further understood and agreed that if at the time the Salt Lake Company is prepared to commence the original construction of that portion of "Salt Lake Unit One" above mentioned in the next preceding section, the Southern Company or the Pacific Electric Railway Company shall notify the Salt Lake Company that the said railway construction will be undertaken upon the right of way hereinbefore granted, then the Salt Lake Company shall, subject to condition (c) of Section 1 of this article, construct said portion of said "Salt Lake Unit One" easterly of and adjacent to said right of way hereinbefore described, and the excess cost of such construction of said portion of "Salt Lake Unit One" upon such location, over and above what the cost would have been of constructing the same upon the right of way granted shall be paid to the Salt Lake Company by the Southern Company within a reasonable time after presentation of bills therefor and in no event shall any part of such excess cost and expense be considered a part of the cost of the joint facilities, except, however, the cost of raising and extending the Fourth Street viaduct as hereinafter provided.

Sec. 5. It is further understood and agreed that in the event that the said portion of said "Salt Lake Unit One" shall be constructed as in the next preceding section described, and thereafter the easement for said right of way shall revert to and revest in the Salt Lake Company as hereinbefore provided, then the value of

said right of way shall be fixed and determined as of the date of this agreement, by the parties hereto, and added to the Capitalization of the joint facilities, as of the date of such reversion, and shall form a part thereof until such time as the said right of way shall be used for purposes other than the joint use of the parties hereto, whereupon the said value shall be deducted from the capitalization.

Sec. 6. It is further understood and agreed that in the event the Salt Lake Company shall commence the construction of said portion of said "Salt Lake Unit One" as provided in Section 3 of this Article before the Pacific Electric Railway Company is ready to commence the construction of said railway, upon the right of way herein granted, the Salt Lake Company shall, in any rearrangement of the Fourth Street viaduct, make provision for the said railway; and the Southern Company shall pay an interest charge at the rate of five per cent (5%) per annum on the extra cost of raising and extending the said Fourth Street viaduct so as to provide space for said railway, until such excess cost shall have been paid to the Salt Lake Company as hereinbefore in Section 3 of this Article provided.

In the event, however, the said easement for said railway shall cease and determine, then and thereafter the Southern Company shall only pay said interest on such extra cost of raising and extending said Fourth Street viaduct until the said space provided for said railway by said extra cost shall be used by the Salt Lake Company, or any other Company other than the South-

ern Company or Pacific Electric Railway Company, their successors or assigns, whereupon further interest payment on said extra cost by the Southern Company shall cease and determine.

Sec. 7. As long as the present method of assessing taxes to railroads in the State of California on gross revenue is in effect, it is mutually agreed that the Southern Company or the Pacific Electric Railway Company shall not be charged with any taxes on account of said right of way in this Article granted. In the event, however, that any change is made in the present method of taxation so that the physical and real properties of railroad companies are directly assessed for taxation, then and in such event any taxes levied upon or fairly attributable to or assessed against the said right of way, including all tracks and other appurtenances of said railway situated on said right of way, shall be paid by the Southern Company or the Pacific Electric Railway Company to the Salt Lake Company on bills rendered therefor, unless or until said right of way shall revert to the Salt Lake Company, whereupon such taxes and assessments shall be apportioned to the parties hereto in the same manner as other taxes and assessments so long as the value of said right of way is included as a part of the capitalization of the joint facilities.

Sec. 8. Whereas, the protection against erosion of the easterly bank of the Los Angeles River is and will be a benefit to the joint facilities and to the exclusively owned property of the Salt Lake Company and to the said right of way granted, it is understood and agreed

that any assessment or any cost or expense paid or incurred in said protection after the effective date of this agreement, shall be paid by the Southern Company and the Salt Lake Company in equal shares, until such time as the Pacific Electric Railway Company shall construct its railroad upon said right of way, whereupon said cost and expense where the same is incurred along the river bank abutting said right of way of the Pacific Electric Railway Company, shall be divided between the Southern Company and the Salt Lake Company and the Pacific Electric Railway Company in equal shares; and the Southern Company hereby agrees to pay or cause to be paid to the Salt Lake Company the share of any such assessment, cost or expense paid by or incurred by the Salt Lake Company and chargeable to Pacific Electric Railway Company as aforesaid.

Sec. 9. The Southern Company, for itself and the Pacific Electric Railway Company, hereby agrees to indemnify and save harmless the Salt Lake Company from any and all loss, damage or liability which the Salt Lake Company may suffer or be called upon to bear arising from the fact that the Salt Lake Company is the owner of the fee of the right of way herein granted, in the event said railway is constructed thereon.

Article XIV.

Sec. 1. In case any disagreement shall arise between the parties hereto as to the meaning of any provisions of this agreement, or concerning the observance or performance of any covenant hereof, or if said parties

shall fail to agree upon any matter of values, rentals or apportionment of any charges or expenses, or divisions of rentals received from third parties, as provided hereunder, or as to any other matter arising under this agreement, then such subject of disagreement shall be submitted to the arbitrament of three persons familiar with such matters and experienced in railway management. The party demanding the arbitration shall give to the other party notice of such demand, stating specifically the questions to be submitted for decision and nominating a person who has the required qualifications to act as one arbitrator. If, at the expiration of thirty (30) days from the receipt of such notice, the party receiving it has not notified the party demanding the arbitration of its nomination of the second arbitrator having like qualifications, a Judge of any court of the United States having jurisdiction in the State of California may make such selection. The first and second arbitrators chosen shall select a third within thirty (30) days after the selection of the second arbitrator, and when the board is complete the arbitrators, within a reasonable time, shall fix a date and place for the hearing, of which the parties shall be severally notified. If the arbitrators chosen shall be unable to agree upon a third arbitrator, such third arbitrator may be appointed upon ten (10) days' notice upon motion of either party by a Judge as hereinbefore provided. After hearing the testimony and arguments which may be submitted by each party, the arbitrators, if they unanimously agree upon an award shall state it in writing, which, when delivered to both parties,

shall be binding and conclusive upon each, and each party hereby expressly agrees to observe the same and to be conclusively bound thereby. If they cannot agree unanimously, they shall forthwith select two additional arbitrators having like qualifications. If either or both of the additional arbitrators cannot be agreed upon they may be appointed on ten (10) days' notice by any Judge hereinbefore in this section referred to. To the Board thus constituted shall be submitted a statement touching the facts as to which there is an unanimous agreement, if any, between the three arbitrators first selected and the testimony as to matters remaining in dispute. The award of a majority of the five arbitrators shall be in writing, and when delivered to the parties shall be as final and conclusive as an award by the first chosen arbitrators would have been.

If either party shall refuse to keep and perform any award, the adverse party may enforce the same by apt proceedings in any court of law or equity having jurisdiction in the premises. The board of arbitrators shall in their award determine which party shall pay the cost and expenses of the arbitration, or how the same shall be divided between or borne by the respective parties. Until the arbitrators shall make their award upon any question submitted to them, the business, settlements or payments to be transacted or made under the terms of this agreement shall continue to be transacted and made in the manner and form existing prior to the arising of such question, but the accounts and settlements shall be adjusted in accordance with the ruling of the arbitrators.

Sec. 2. Notices under this agreement to be given, by any party hereto to another party, shall be made in writing and delivered to the President, Vice President, General Manager or Assistant General Manager of the party hereto to be notified.

ARTICLE XV.

Sec. 1. This agreement shall become operative and effective when it shall have been approved by the Railroad Commission of the State of California, and when all necessary franchises, permits, and/or rights have been obtained from governmental authorities; and shall be and remain in full force and effect for a period of ninety-nine (99) years thereafter; provided, however, that if either party hereto desires to terminate the agreement upon the expiration of said ninety-nine (99) year period, or within two (2) years thereafter, it shall give two (2) years' written notice to that effect to the other party. Unless such notice is given, this agreement shall continue in full force and effect after expiration of said ninety-nine (99) year period subject to termination by either party hereto giving two (2) years' written notice to that effect to the other party.

Sec. 2. This agreement shall be binding upon and inure to the benefits of the parties hereto, their successors and assigns, but no sale, assignment, mortgage or lease by any of the parties hereto of any interest or right given them under this agreement, separate from sale, assignment, mortgage or lease of its entire railroad shall be valid or binding without the written con-

sent of the President or Vice President of the other companies, attested by their Secretaries or Assistant Secretaries; provided, however, that an assignment or mortgage of the interest of the respective parties hereunder without such written consent may be made to any trustee under any deed of trust or mortgage now existing against or upon any of the properties included in this agreement, as supplemental to such mortgage or deed of trust, or to any trustee under any general mortgage or deed of trust hereafter executed.

Sec. 3. This agreement is subject to all valid and existing contracts, leases, liens or incumbrances which may affect the properties and or joint facilities, covered by this agreement, of the respective parties hereto, and the word "grant" as used herein shall not be construed as a covenant against the existence of any thereof.

IN WITNESS WHEREOF, each of the parties hereto has caused this agreement to be executed in quadruplicate by its President, and sealed and attested by its Secretary or Assistant Secretary of the day and year first hereinabove written.

SOUTHERN PACIFIC RAILROAD COMPANY,

Attest: By (Sgd.) WM. SPROULE,

(Sgd.) G. L. KING, President.

(Seal) Secretary.

SOUTHERN PACIFIC COMPANY,

Attest: By (Sgd.) WM. SPROULE,

(Sgd.) G. L. KING, President.

(Seal) Asst. Secretary.

LOS ANGELES & SALT LAKE RAILROAD COMPANY,

Attest: By (Sgd.) W. A. CLARK,

W. H. COMSTOCK, President.

(Seal) Secretary.

Approved:

ARTHUR MAGUIRE,

Chief Engineer L. A. & S. L. R. R.

Description Correct:

H. B. TITCOMB,

Engineer S. P. Co.

Approved as to Form:

July 19, 1917.

WM. F. HERRIN,

Vice President and Chief Counsel.

(Endorsed): Agreement, between Southern Pacific Railroad Company, Southern Pacific Company and Los Angeles & Salt Lake Railroad Company, July 18th, 1917, Los Angeles Terminal Facilities.

In the Supreme Court of the United States

October Term, 1922

Railroad Commission of the State of California, Petitioner, vs. Southern Pacific Company (a corporation), Southern Pacific Railroad Company (a corporation), Respondents.	No. 984
Railroad Commission of the State of California, Petitioner, vs. The Atchison, Topeka & Santa Fe Railway Company (a corporation), Respondent.	No. 985
Railroad Commission of the State of California, Petitioner, vs. Los Angeles and Salt Lake Railroad Company (a corporation), Respondent.	No. 986

STIPULATION

DEFINING RECORD.

It is hereby stipulated between the parties to the above entitled proceedings that the transcript of record

filed herein with the petitions for writs of certiorari to the Supreme Court of the State of California, together with the documents hereinafter tabulated, shall be deemed the record on certiorari in said proceedings;

1. Excerpts from the transcript of testimony taken in hearings before the Railroad Commission in certain proceedings reviewed by the Supreme Court of the State of California in the cases of Southern Pacific Company v. Railroad Commission, S. F. No. 10,111, Atchison, Topeka & Santa Fe Railway Company, L. A. No. 7166, and Los Angeles and Salt Lake Railroad Company, L. A. No. 7165.

2. Copy of a certain contract annexed as an exhibit to Application No. 3346, filed by the Southern Pacific Company, Los Angeles and Salt Lake Railroad Company and Pacific Electric Railroad Company with the Railroad Commission of the State of California, which said application and contract were part of the record on review before the said Supreme Court of the State of California in said cases numbered S. F. 10,111, L. A. No. 7166, and L. A. No. 7165.

3. Copy of the decision of the Railroad Commission of the State of California rendered the 25th day of November, 1913, Decision No. 1090, authorizing the erection of a passenger depot by the Southern Pacific Company in Los Angeles.

4. Certified copy of the California Railroad Commission's Exhibit No. 1 in the proceedings of the Railroad Commission reviewed by the Supreme Court of

the State of California in said cases numbered S. F. 10,111, L. A. No. 7166, and L. A. No. 7165.

5. Certified copies of the California Railroad Commission's Exhibit No. 2 in said last named proceedings.

6. Certified copy of the California Railroad Commission's exhibit entitled "Analysis of Southern Pacific-Salt Lake Exhibits numbers 27 and 28 (Cases No. 970, et seq.)."

7. Copy of Southern Pacific-Salt Lake Exhibit No. 1 in said proceedings, said copy being stipulated by the parties to be true and correct in all particulars.

8. Copies of Southern Pacific-Salt Lake Exhibits 8-A to 8-I, inclusive, in said proceedings, said copies being stipulated by the parties to be true and correct in all particulars.

9. Copy of Southern Pacific-Salt Lake Exhibit No. 27 in said proceedings, said copy being stipulated by the parties to be true and correct in all particulars.

10. Copy of Southern Pacific-Salt Lake Exhibit No. 29 in said proceedings, said copy being stipulated by the parties to be true and correct in all particulars.

11. Copy of Southern Pacific-Salt Lake Exhibit No. 30 in said proceedings, said copy being stipulated by the parties to be true and correct in all particulars.

12. It is further stipulated by the parties hereto that in making this stipulation, the Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company do not consent to the review by the Supreme

Court of the United States, nor waive any right of objection or defense that might otherwise be available, provided the entire record was presented to the Supreme Court of the United States with the petition for writ of certiorari.

HUGH GORDON,
WILLIAM W. CLARY,
Attorneys for Petitioner,
Railroad Commission of the State of California.

A. S. HALSTED,
FRED E. PETTIT, JR.,
Attorneys for Respondent,
Los Angeles and Salt Lake Railroad Co.

E. W. CAMP,
M. W. REED,
Attorneys for Respondent,
Atchison, Topeka & Santa Fe Railway Co.

WM. F. HERRIN,
C. W. DURBROW,
Attorneys for Respondents,
Southern Pacific Company and Southern Pacific Railroad Company.

(APPENDIX AND MAP FOLLOW.)

Appendix.

Appendix

Decision No. 1090.

In the matter of the application of the Southern Pacific Company for approval of plans and specifications covering the construction of a new passenger station at Los Angeles, State of California.

Application No. 793.
Decided November 25 1913.

Applicant authorized to tear down and abandon its present passenger depot in the City of Los Angeles and to erect a new depot in lieu thereof and to take up and relocate such trackage as is necessary in connection therewith.

Trippet, Chapman & Biby, representing complainant in Case No. 467.

C. W. Durbrow and Frank Karr, representing Southern Pacific Company and Pacific Electric Railway Company.

John C. Mott and G. C. O'Connell, representing Alameda street property owners, intervenors.

S. W. Haskins, representing Los Angeles Railway Corporation.

Albert Lee Stephens and Howard Robertson, representing the City of Los Angeles.

Report of the Commission.

Edgerton, Commissioner.

This is an application by Southern Pacific Company for an order authorizing it to tear down and abandon an existing passenger depot building in the City of Los Angeles, and to erect a new depot in said city, in accordance with plans and specifications on file herein, the approval of which is also asked, and to take up and relocate existing trackage and place new trackage in accordance with said plans and specifications.

Prior to the filing of this application, W. H. Daum filed with this Commission a complaint alleging, in substance, that the Southern Pacific Company was operating its steam line railroad into the City of Los Angeles over Alameda Street to and beyond the depot site herein mentioned, and that said railroad between Main Street and Ninth Street on said Alameda Street operates at grade across several important streets, and that said operation results in serious danger, damage and inconvenience to the public using such cross streets, and that the building of the depot herein mentioned would result in preventing or delaying the separation of such grade crossings.

The complaint of said W. H. Daum was first heard and immediately following said hearing, the application of said Southern Pacific Company for the approval of the aforesaid plans was heard, and it was agreed by all the parties that any relevant evidence introduced at either hearing might be considered as having been introduced at either or both hearings.

At the hearing of this application W. H. Daum appeared and objected to the approval of these depot plans, unless such approval would in no wise interfere with or delay the separation of the grade crossings complained of.

The City of Los Angeles appeared in this matter and made no objection to the approval of these plans and specifications, provided that such approval would in no wise delay or prevent the separation of dangerous or objectionable grade crossings.

The plans and specifications submitted for the approval of the Commission have been carefully examined and approved by the engineering department of this Commission.

The structure to be erected under these plans will be efficient and ample to provide for the probable passenger traffic coming to and departing from a city several times the present size of Los Angeles. The track lay-out will be very much improved over that which now exists, and altogether the proposed depot will be a great improvement over the present one. The cost of this depot and track lay-out is estimated to be $300,000.00 for the depot and $315,000.00 for the track lay-out, etc.

It is planned to bring the Pacific Electric Railway Company cars on to the depot property, thus unloading and loading passengers away from the street, but no definite plan has been agreed upon for the convenient loading and unloading of passengers to and from the local street cars operated by the Los Angeles Railway Corporation, and I believe this matter should be given

immediate consideration by the city and the companies involved, in order that passengers traveling on the local street cars may be taken to and from this depot comfortably and conveniently.

The testimony by the engineer and architect of applicant was that with an expenditure of $10,000.00 this depot would be entirely suitable, efficient and convenient, if the tracks of applicant were elevated or depressed, or other means adopted, separating grades along Alameda Street.

Furthermore, counsel for applicant stipulated that if permitted to erect this depot, no objection would ever be made to the separation of grade crossings in the City of Los Angeles, based on the expenditure made for the erection of this depot.

In view of the fact that Los Angeles is urgently demanding this new depot and as it will take considerable time to build the same, and as it is clear from the evidence and stipulation heretofore mentioned that the erection of this depot will in no wise delay or prevent the separation of dangerous and objectionable grade crossings in the City of Los Angeles, I recommend that the application be granted upon condition that the erection of the proposed depot and track layout shall never be used as a defense against the separation of grade crossings.

I submit herewith the following form of order:

ORDER.

Application having been made by Southern Pacific Company for permission to tear down and abandon a

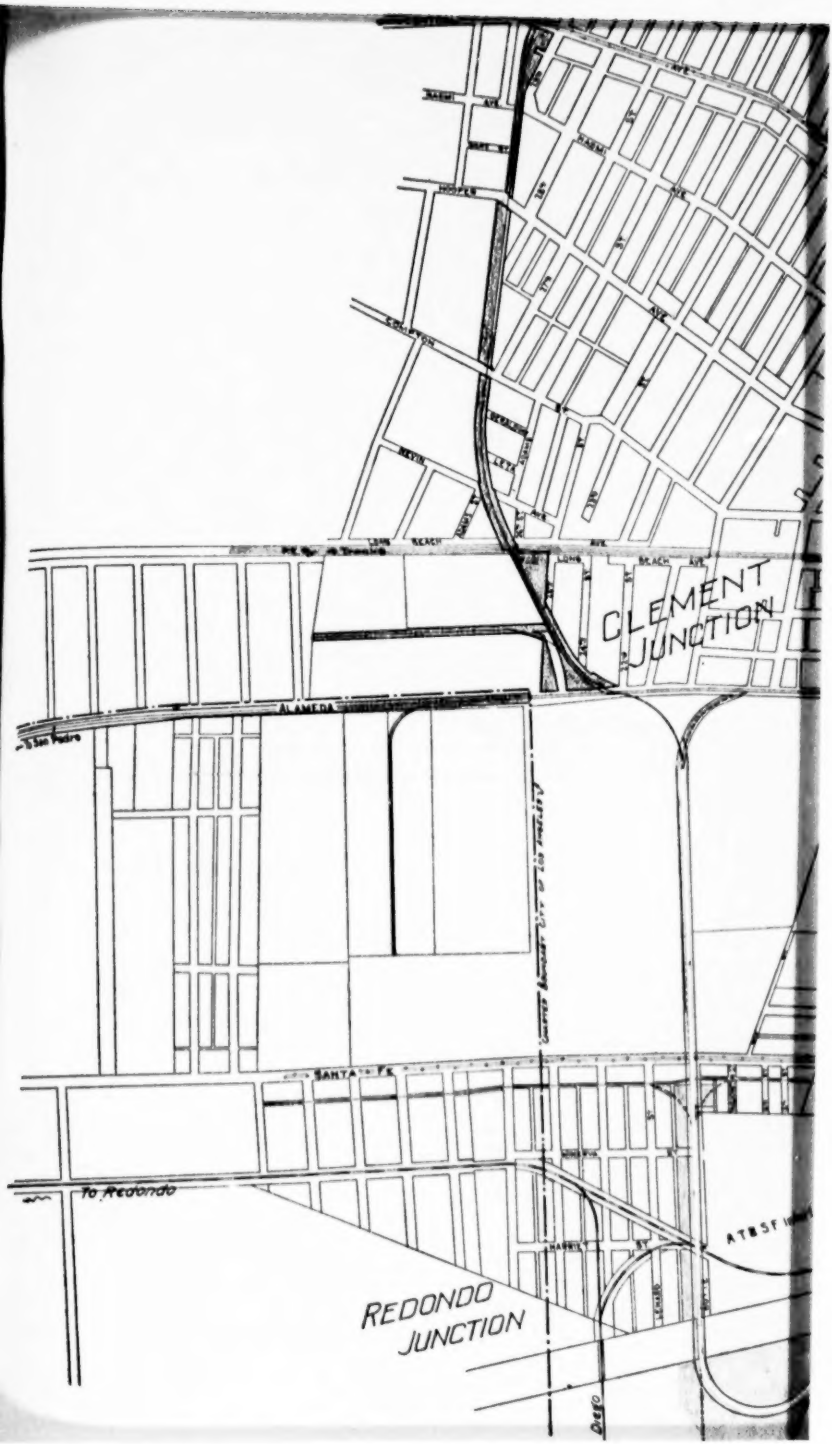
depot in the City of Los Angeles and to erect in place thereof a new depot and to take up, relocate and place new trackage in connection with said depot, all in accordance with plans and specifications filed herein, and a public hearing having been held thereon and it appearing to the Commission that said application should be granted,

It is hereby ordered that Southern Pacific Company is hereby authorized to tear down and abandon its passenger depot located on Alameda Street between Fourth and Sixth Streets, in the City of Los Angeles, and to erect in lieu thereof a new passenger depot on said Alameda Street between said Fourth and Sixth Streets and to take up, relocate and place new trackage in connection with the erection of said new depot, all in accordance with plans and specifications on file herein and marked exhibits "F" to "Z", inclusive; provided, however, that the tearing down and abandonment of said old depot and the erection of said new depot, and the taking up, relocating and placing of new trackage in connection with said new depot, or the approval of this Commission therefor, shall never be used as a defense against the separation of grade crossings in the State of California.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 25th day of November, 1913.

3 Cal. RR. Com. Dec. 927.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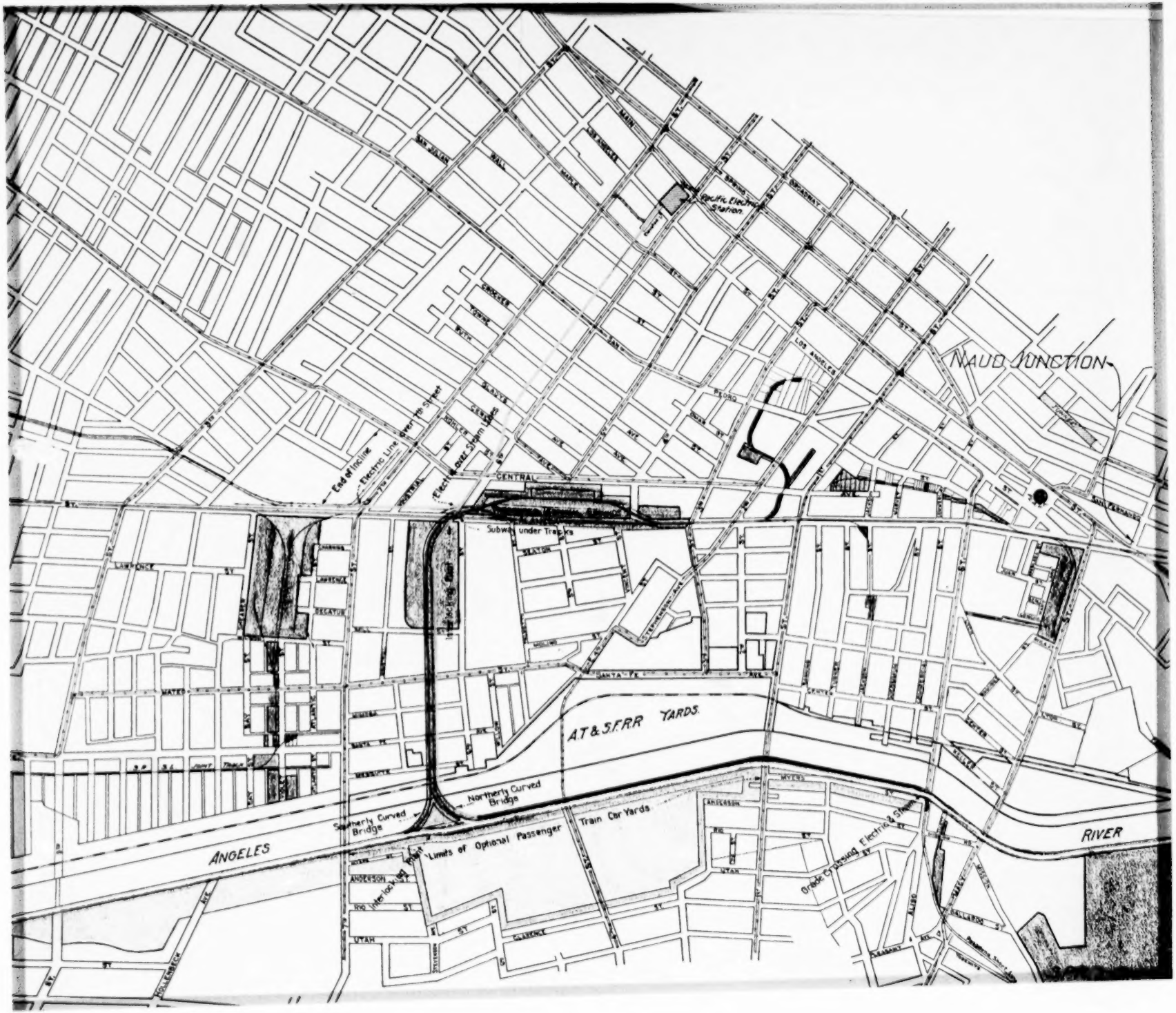

NAUD JUNCTION
End of Incline
Electric Line
Electric and Steam Lines
CENTRAL
Subway under Tracks
A.T.&S.F.R.R. YARDS
Northerly Curved Bridge
Southerly Curved Bridge
Limits of Optional Passenger
Train Car Yards
Grade Crossing Electric & Steam
ANGELES
RIVER
ANDERSON
UTAH
MYERS
SANTA FE

AGREEMENT

Between

Southern Pacific Railroad Company,

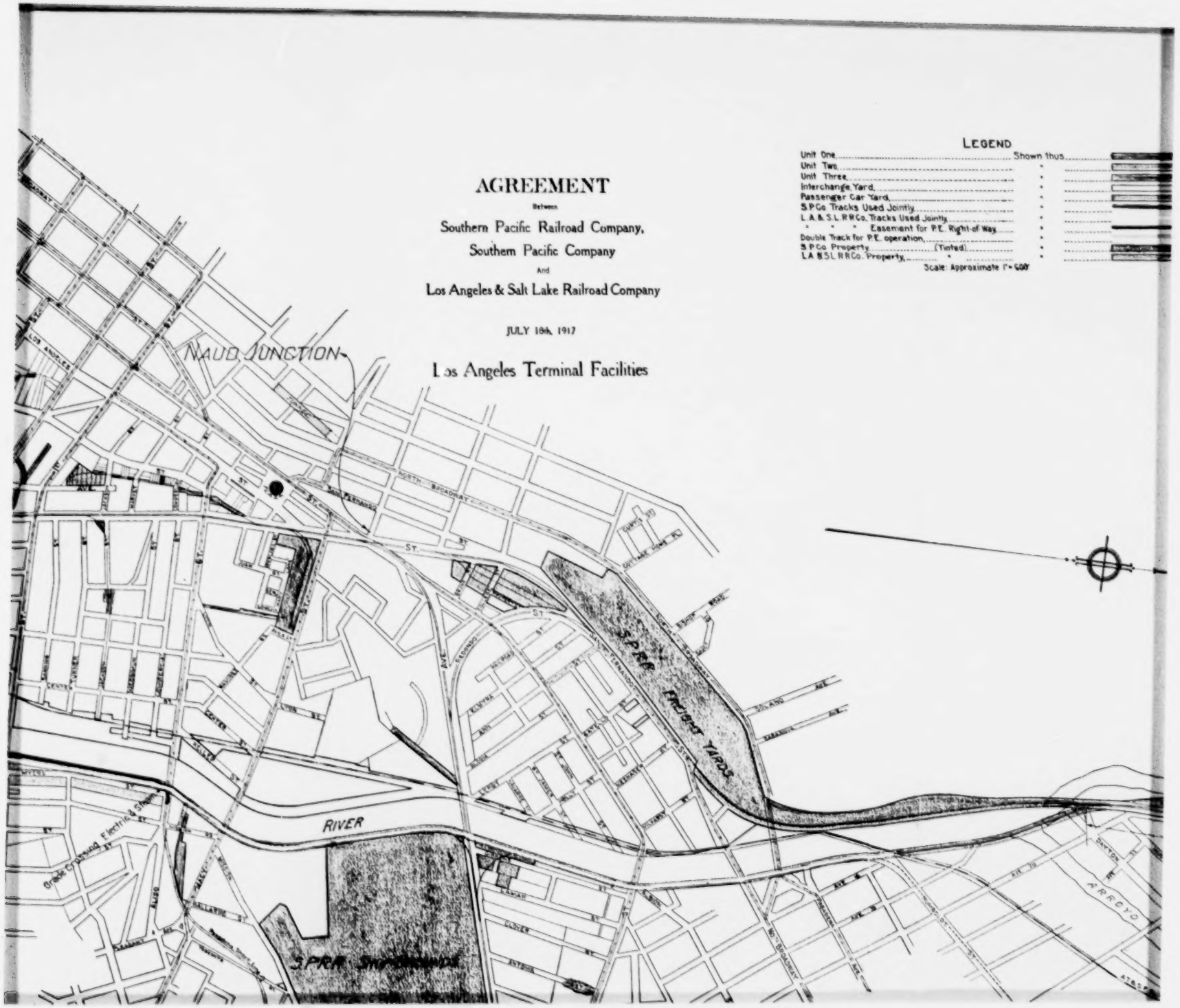
Southern Pacific Company

And

Los Angeles & Salt Lake Railroad Company

JULY 18th, 1917

Los Angeles Terminal Facilities


LEGEND
Unit One ..... Shown thus .....
Unit Two ..... " .....
Unit Three ..... " .....
Interchange Yard ..... " .....
Passenger Car Yard ..... " .....
S.P.Co. Tracks Used Jointly ..... " .....
L.A.&S.L.R.R.Co. Tracks Used Jointly ..... " .....
" " " Easement for P.E. Right-of-Way ..... " .....
Double Track for P.E. operation ..... " .....
S.P.Co. Property (Tinted) ..... " .....
L.A.&S.L.R.R.Co. Property ..... " .....
Scale: Approximate 1" = 600'
NAUD JUNCTION
NORTH BROADWAY
ST.
AVE.
S.P.R.R. FREIGHT YARDS
RIVER
ARROYO
DAYTON ST.
MACY ST.
ATSF

GREEMENT

Between

Pacific Railroad Company,

ern Pacific Company

And

& Salt Lake Railroad Company

JULY 18th 1917

les Terminal Facilities

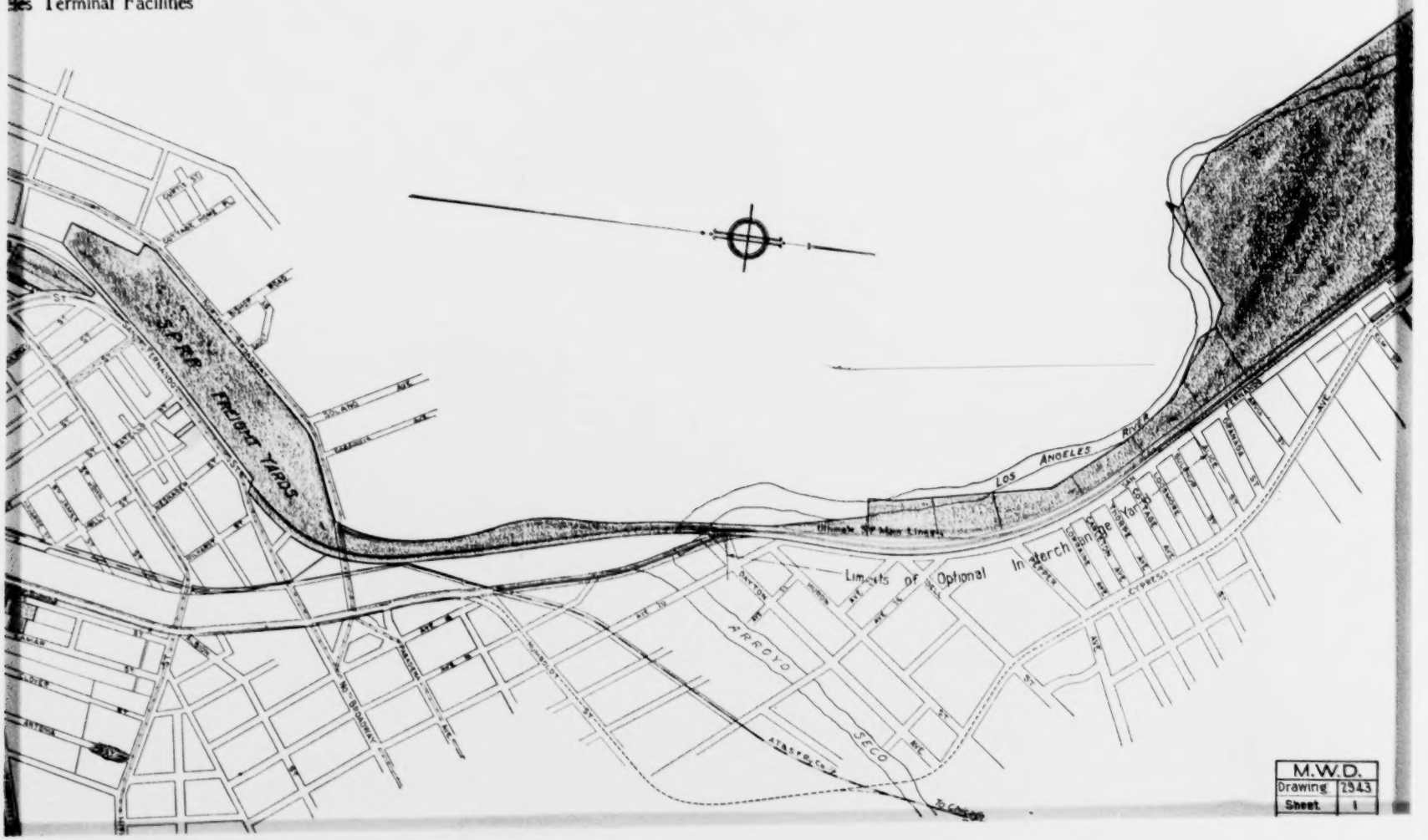
LEGEND

Unit One	Shown thus	
Unit Two	"	
Unit Three	"	
Interchange Yard	"	
Passenger Car Yards	"	
S.P.Co. Tracks Used Jointly	"	
L.A.& S.L.R.R.Co. Tracks Used Jointly	"	
" " " Easement for P.E. Right-of Way	"	
Double Track for P.E. operation	"	
S.P.Co. Property (Tinted)	"	
L.A.& S.L.R.R.Co. Property	"	

Scale Approximate 1" = 600'

Approved:- H B TITCOMB
Asst. Engineer S.P.Co.

Approved:- ARTHUR MAGUIRE
Chief Engineer L.A.& S.L.R.R.Co.



WRIT OF CERTIORARI AND RETURN—Filed Nov. 3, 1923

UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of California, Greeting:

Being informed that there is now pending before you a suit in which Southern Pacific Company, Southern Pacific Railroad Company, are petitioners, and Railroad Commission of the State of California and Harvey D. Loveland, Harley W. Brundige, Irving Martin, Chester H. Rowell and H. Stanley Benedict, Members of and constituting said Railroad Commission, are respondents, No. S. F. 10111, which suit was removed into the said Supreme Court on a review from the Railroad Commission of the State of California, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Supreme Court and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the twenty-third day of June, in the year of our Lord one thousand nine hundred and twenty-three.

Wm. R. Stansbury, Clerk of the Supreme Court of the United States.

[File endorsement omitted.]

IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1922

[Title omitted]

STIPULATION DEFINING RECORD

It is hereby stipulated between the parties to the above entitled proceedings that the transcript of record filed herein with the petitions for writs of certiorari to the Supreme Court of the State of California, together with the documents hereinafter tabulated, shall be deemed the record on certiorari in said proceedings:

1. Excerpts from the transcript of testimony taken in hearings before the Railroad Commission in certain proceedings reviewed by the Supreme Court of the State of California in the cases of Southern

Pacific Company v. Railroad Commission, S. F. No. 10111, Atchison, Topeka & Santa Fe Railway Company, L. A. No. 7166, and Los Angeles and Salt Lake Railroad Company, L. A. No. 7165.

2. Copy of a certain contract annexed as an exhibit to Application No. 3346, filed by the Southern Pacific Company, Los Angeles and Salt Lake Railroad Company and Pacific Electric Railroad Company with the Railroad Commission of the State of California, which said application and contract were part of the record on review before the said Supreme Court of the State of California in said cases numbered S. F. 10111, L. A. No. 7166, and L. A. No. 7165.

3. Copy of the decision of the Railroad Commission of the State of California rendered the 25th day of November, 1913, Decision No. 1090, authorizing the erection of a passenger depot by the Southern Pacific Company in Los Angeles.

4. Certified copy of the California Railroad Commission's exhibit No. 1 in the proceedings of the Railroad Commission reviewed by the Supreme Court of the State of California in said cases numbered S. F. 10111, L. A. No. 7165, and L. A. No. 7165.

5. Certified copies of the California Railroad Commission's exhibit No. 2 in said last named proceedings.

6. Certified copy of the California Railroad Commission's exhibit entitled "analysis of Southern Pacific-Salt Lake Exhibits numbers 27 and 28 (Cases No. 970, et seq.)."

7. Copy of Southern Pacific-Salt Lake Exhibit No. 1 in said proceedings, said copy being stipulated by the parties to be true and correct in all particulars.

8. Copies of Southern Pacific-Salt Lake Exhibits 8-A to 8-I, inclusive, in said proceedings, said copies being stipulated by the parties to be true and correct in all particulars.

9. Copy of Southern Pacific-Salt Lake Exhibit No. 27 in said proceedings, said copy being stipulated by the parties to be true and correct in all particulars.

10. Copy of Southern Pacific-Salt Lake Exhibit No. 29 in said proceedings, said copy being stipulated by the parties to be true and correct in all particulars.

11. Copy of Southern Pacific-Salt Lake Exhibit No. 30 in said proceedings, said copy being stipulated by the parties to be true and correct in all particulars.

12. It is further stipulated by the parties hereto that in making this stipulation, the Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company do not consent to the review by the Supreme Court of the United States, nor waive any right of objection or defense that might otherwise be available, provided the entire rec-

ord was presented to the Supreme Court of the United States with the petition for writ of certiorari.

Hugh Gordon, William W. Clary, Attorneys for Petitioner, Railroad Commission of the State of California. A. S. Halsted, Fred E. Pettit, Jr., Attorneys for Respondent Los Angeles and Salt Lake Railroad Co. E. W. Camp, M. W. Reed, Attorneys for Respondent Atchison, Topeka & Santa Fe Railway Co. Wm. F. Herrin, C. W. Durbrow, Attorneys for Respondents Southern Pacific Company and Southern Pacific Railroad Company.

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding and annexed is a true and correct copy of Stipulation Defining Record (S. P. Co. & S. P. Rr. Co. v. Railroad Commission, S. F. 10111), as shown by the records of my office.

Witness my hand and the Seal of the Court, this 24th day of October, A. D. 1923.

B. Grant Taylor, Clerk, San Francisco Office. [Seal of the Supreme Court of California.]

[File endorsement omitted.]

[File endorsement omitted.]

WRIT OF CERTIORARI AND RETURN—Filed Nov. 3, 1923

UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of California, Greeting:

Being informed that there is now pending before you a suit in which The Atchison, Topeka & Santa Fe Railway Company *if* petitioner, and Railroad Commission of the State of California, and H. W. Brundige, H. D. Loveland, Irving Martin, Chester H. Rowell and H. S. Benedict, as Members of and constituting said Commission, are respondents, L. A., No. 7166, which suit was removed into the said Supreme Court on a review from the Railroad Commission of the State of California, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Supreme Court and removed into the Supreme Court of the United States, do hereby command that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the twenty-third day of June, in the year of our Lord one thousand nine hundred and twenty-three.

Wm. R. Stansbury, Clerk of the Supreme Court of the United States.

[File endorsement omitted.]

IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1922

[Title omitted]

STIPULATION DEFINING RECORD

It is hereby stipulated between the parties to the above entitled proceedings that the transcript of record filed herein with the petitions for writs of certiorari to the Supreme Court of the State of California, together with the documents hereinafter tabulated, shall be deemed the record on certiorari in said proceedings:

1. Excerpts from the transcript of testimony taken in hearings before the Railroad Commission in certain proceedings reviewed by the Supreme Court of the State of California in the cases of Southern Pacific Company v. Railroad Commission, S. F. No. 10111, Atchison, Topeka & Santa Fe Railway Company, L. A. No. 7166, and Los Angeles and Salt Lake Railroad Company, L. A. No. 7165.

2. Copy of a certain contract annexed as an exhibit to Application No. 3346, filed by the Southern Pacific Company, Los Angeles and Salt Lake Railroad Company and Pacific Electric Railroad Company with the Railroad Commission of the State of California, which said application and contract were part of the record on review before the said Supreme Court of the State of California in said cases numbered S. F. 10111, L. A. No. 7166, and L. A. No. 7165.

3. Copy of the decision of the Railroad Commission of the State of California rendered the 25th day of November, 1913, Decision No. 1090, authorizing the erection of a passenger depot by the Southern Pacific Company in Los Angeles.

4. Certified copy of the California Railroad Commission's exhibit No. 1 in the proceedings of the Railroad Commission reviewed by the Supreme Court of the State of California in said cases numbered S. F. 10111, L. A. No. 7166, and L. A. No. 7165.

5. Certified copies of the California Railroad Commission's exhibit No. 2 in said last named proceedings.

6. Certified copy of the California Railroad Commission's exhibit entitled "Analysis of Southern Pacific-Salt Lake Exhibits numbers 27 and 28 (Cases No. 970, et seq.)."

7. Copy of Southern Pacific-Salt Lake Exhibit No. 1 in said proceedings, said copy being stipulated by the parties to be true and correct in all particulars.

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10. Copy of Southern Pacific-Salt Lake Exhibit No. 29 in said proceedings, said copy being stipulated by the parties to be true and correct in all particulars.

11. Copy of Southern Pacific-Salt Lake Exhibit No. 30 in said proceedings, said copy being stipulated by the parties to be true and correct in all particulars.

12. It is further stipulated by the parties hereto that in making this stipulation, the Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company do not consent to the review by the Supreme Court of the United States, nor waive any right of objection or defense that might otherwise be available, provided the entire record as presented to the Supreme Court of the United States with the petition for writ of certiorari.

Hugh Gordon, William W. Clary, Attorneys for Petitioner, Railroad Commission of the State of California. A. S. Halsted, Fred E. Pettit, Jr., Attorneys for Respondent Los Angeles and Salt Lake Railroad Co. E. W. Camp, M. W. Reed, Attorneys for Respondent Atchison, Topeka & Santa Fe Railway Co. Wm. F. Herrin, C. W. Durbrow, Attorneys for Respondents Southern Pacific Company and Southern Pacific Railroad Company.

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding and annexed is a true and correct copy of Stipulation Defining Record (A. T. & S. F. Ry. Co. v. Railroad Commission, L. A. 7166), as shown by the records of my office.

Witness my hand and the Seal of the Court, this 24th day of October, A. D. 1923.

B. Grant Taylor, Clerk, San Francisco Office. [Seal of the Supreme Court of California.]

[File endorsement omitted.]

[File endorsement omitted.]

Writ of Certiorari and Return—Filed Nov. 3, 1923

United States of America, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of California, Greeting:

Being informed that there is now pending before you a suit in which Los Angeles & Salt Lake Railroad Company is petitioner, and The Railroad Commission of the State of California, H. W. Brundige, H. D. Loveland, Irving Martin, Chester H. Rowell and H. S. Benedict, as Members of and constituting said Commission, are respondents, No. 7165, which suit was removed into the said Supreme Court on review from the Railroad Commission of the State of California, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Supreme Court, and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the twenty-third day of June, in the year of our Lord one thousand nine hundred and twenty-three.

Wm. R. Stansbury, Clerk of the Supreme Court of the United States.

[File endorsement omitted.]

In the Supreme Court of the United States, October Term, 1922

[Title omitted]

Stipulation Defining Record

It is hereby stipulated between the parties to the above entitled proceedings that the transcript of record filed herein with the petitions for writs of certiorari to the Supreme Court of the State of California, together with the documents hereinafter tabulated, shall be deemed the record on certiorari in said proceedings:

1. Excerpts from the transcript of testimony taken in hearings before the Railroad Commission in certain proceedings reviewed by the Supreme Court of the State of California in the cases of Southern Pacific Company v. Railroad Commission, S. F. No. 10111, Atchison,

Topeka & Santa Fe Railway Company, L. A. No. 7163, and Los Angeles and Salt Lake Railroad Company, L. A. No. 7165.

2. Copy of a certain contract annexed as an exhibit to Application No. 3346, filed by the Southern Pacific Company, Los Angeles and Salt Lake Railroad Company and Pacific Electric Railroad Company with the Railroad Commission of the State of California, which said application and contract were part of the record on review before the said Supreme Court of the State of California in said cases numbered S. F. 10111, L. A. No. 7163, and L. A. No. 7165.

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12. It is further stipulated by the parties hereto that in making this stipulation, the Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company do not consent to the review by the Supreme Court of the United States, nor waive any right of objection or defense that might otherwise be available, provided the entire record

was presented to the Supreme Court of the United States with the petition for writ of certiorari.

Hugh Gordon, William W. Clary, Attorneys for Petitioner, Railroad Commission of the State of California. A. S. Halsted, Fred E. Pettit, Jr., Attorneys for Respondent Los Angeles and Salt Lake Railroad Co. E. W. Camp, M. W. Reed, Attorneys for Respondent Atchison, Topeka & Santa Fe Railway Co. Wm. F. Herrin, C. W. Durbrow, Attorneys for Respondents Southern Pacific Company and Southern Pacific Railroad Company.

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding and annexed is a true and correct copy of Stipulation Defining Record (L. A. & S. L. Rr. Co. v. Railroad Commission, L. A. 7165), as shown by the records of my office.

Witness my hand and the Seal of the Court, this 24th day of October, A. D. 1923.

B. Grant Taylor, Clerk, San Francisco Office. [Seal of the Supreme Court of California.]

[File endorsement omitted.]

[File endorsement omitted.]

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PETIT

NO

APR 11 1923
WM. R. STANSBURY
CLERK

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1922

No. 284 283

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,
Petitioner,

vs.

SOUTHERN PACIFIC COMPANY (a corporation) and SOUTHERN PACIFIC RAILROAD COMPANY (a corporation),
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA,
BRIEF IN SUPPORT THEREOF
and
NOTICE OF DATE FOR SUBMISSION THEREOF.

HUGH GORDON,
WILLIAM W. CLABY,
Flood Building, San Francisco,
Attorneys for Petitioner.

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NOTE.

In order to present the matter covered by the following petition it has been necessary to file three petitions for writs of certiorari. The titles of these three petitions are:

(1) *Railroad Commission of the State of California, Petitioner, vs. Southern Pacific Company (a corporation), and Southern Pacific Railroad Company (a corporation), Respondent.*

(2) *Railroad Commission of the State of California, Petitioner, vs. Atchison, Topeka & Santa Fe Railway Company (a corporation), Respondent.*

(3) *Railroad Commission of the State of California, Petitioner, vs. Los Angeles & Salt Lake Railroad Company (a corporation), Respondent.*

These petitions and the briefs accompanying them are identical in subject matter and differ only in the titles of the proceedings. In all three of these cases the transcript of record is the same. One original of this transcript has been filed in each case and fifty copies have been filed in the case of Railroad Commission v. Southern Pacific Company, etc.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1922

No.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,

Petitioner,

vs.

SOUTHERN PACIFIC COMPANY (a corporation) and SOUTHERN PACIFIC RAILROAD COMPANY (a corporation),

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

Your petitioner, the Railroad Commission of California, is a commission created and established by the Constitution of that state and vested by said Constitution and by statutes with the power to regulate and control railroads and other public utilities

doing business therein. Said commission was a party to a proceeding before the Supreme Court of California entitled *Southern Pacific Co., a Corporation and Southern Pacific Railroad Company, a Corporation* vs. *Railroad Commission of the State of California, et al.* A decision in this proceeding was rendered December 19, 1922, became final January 18, 1923 and is reported in 64 California Decisions 557.

In this case certain state statutes and the authority of the Railroad Commission under these statutes to make regulations relative to depot facilities of railroads were drawn in question on the ground of their being repugnant to the Act of Congress of 1920, amendatory to the Interstate Commerce Act, and the decision of the California Supreme Court was against their validity.

The decision of the State Supreme Court holds that certain powers formerly vested by state laws in the Railroad Commission have been terminated by said Act of Congress and vested in the Interstate Commerce Commission. In our opinion the construction given said Act of Congress by said decision is erroneous. We also believe that the question here at issue is of more than local importance in that it involves the duties and powers of the Interstate Commerce Commission and the powers of every state to regulate and control service and facilities of railroads.

SUMMARY OF MATTER INVOLVED.

Los Angeles is a city having a population of about 600,000 inhabitants. It is served by three steam railroads doing both intrastate and interstate business, i. e., the "Southern Pacific", the "Atchison, Topeka & Santa Fe" and the "Los Angeles and Salt Lake". Each of these companies has a separate line of railroad running into said city crossing numerous public streets at grade and each has a separate passenger depot. There is attached to this Petition a map showing the location of the railroad lines of the three railroad companies involved in these cases.

In 1916 seven complaints against the three last named companies were filed with the Railroad Commission. Three of these complaints were filed by different so-called Civic and Improvement Associations in Los Angeles and four by adjacent municipalities whose citizens travel back and forth to and from Los Angeles. A copy of one of these complaints will be found in the transcript, page 7. It is sufficient here to state that all these complaints alleged that there are a large number of dangerous grade crossings of each of the three steam railroad lines over public streets and street and interurban electric railways and two of the complaints alleged that the existing passenger depot of each of the three railroad companies is inadequate and inconveniently situated. The relief asked by the various complaints included a general investigation of the whole railroad and terminal situation, the

separation or abolition of dangerous grade crossings, and the construction and use jointly by the three railroad companies of a union passenger depot.

Later the Southern Pacific and Salt Lake companies filed a joint application with the commission asking permission to rearrange their tracks so as to abolish some of the important grade crossings and to use jointly the present Southern Pacific station as a common passenger depot. The Santa Fe Company was not included in this proposed arrangement.

The seven complaints and the application were consolidated for hearing before the Railroad Commission and one final order was made as to all. The engineering investigation and hearings in the consolidated matter, including a rehearing had before the commission, extended over a period of more than four years.

In the evidence submitted by various engineers were four plans for a union depot at the area specified, all of which contemplated a joint use by all of the defendants of certain existing terminal facilities owned by each of them to such extent as would enable the carriers to use the proposed union station in the most convenient manner. There was also an inspection of the premises by the commission.

The final order of the commission made no finding to the effect that a joint use of existing facilities was required and no such joint use was ordered.

The commission in its final order stated:

"It was urged by the carriers that the order requiring a union passenger depot at the plaza is without support in the evidence and that the Commission disregarded the evidence of carriers and relied exclusively upon the report of the Commission's own engineer. The Commission has given this claim careful consideration. Five detailed plans for a union terminal were introduced in evidence by five different witnesses. They were the Hawgood plan, the Barnard plan, the Storrow plan, the Southern Pacific-Salt Lake plan and the Sachse plan. With the exception of the Southern Pacific-Salt Lake plan, all of these plans called for a union passenger depot at the plaza, but differed as to the exact location of the depot and the arrangement of tracks, approaches, etc. In addition to these, the so-called Arnold report was introduced and there was much other evidence, all supporting the general proposition that a union depot at the plaza was necessary. The Commission did not rely solely on the report of its own engineer, nor did it adopt the Sachse plan in all its particulars, but, in accordance with the overwhelming preponderance of the evidence, the Commission did order a union depot at the general site of the plaza, and left the exact location of the depot, tracks, approaches, etc., to be determined by the carriers themselves, subject only to the final approval of the Commission."

The final order of the commission was made December 6, 1921. (Tr. pp. 131-152 inc.)

FINDINGS OF THE COMMISSION.

This order was based upon certain findings of fact which may be condensed and summarized as follows:

Certain grade crossings of the Southern Pacific, Santa Fe, and Salt Lake railroads are unsafe and public safety, convenience and necessity require their elimination.

The passenger stations of said railroad companies are inadequate to meet the public needs both in the matter of depot facilities and in connection with the elimination of grade crossings.

In order to eliminate the certain grade crossings enumerated *and* secure to the public the adequate and convenient union passenger terminal facilities which it requires, it is necessary that a union station be erected within an area specified.

COMMISSION'S ORDER.

The order itself was specific and required certain definite things to be done. Briefly these were:

The procurement jointly by the three carriers of grounds for a union depot within the area specified.

The filing of plans and specifications jointly by the three carriers for the construction of an adequate union passenger depot. (Provisions were made in the order as to apportionment of cost and time of construction.)

The actual construction of the depot in accordance with approved plans.

The elimination of 17 specified grade crossings on the Southern Pacific line by the cessation of train operations longitudinally at grade along and upon a certain street. (Alameda Street.)

The elimination of 6 specified grade crossings on the Santa Fe and Salt Lake lines by the construction of viaducts.

Each of the three carriers obtained from the Supreme Court of California a writ of review directed to the Railroad Commission to review the proceedings and order above described. The three proceedings raised almost identical questions and were treated by the State Supreme Court as one case. However, they were separate cases and for that reason it has been necessary to petition for three writs of *certiorari* here. The petitions are identical and the same transcript of record is used in all these cases.

GROUNDS OF STATE SUPREME COURT'S DECISION.

The Supreme Court of California ruled that the Railroad Commission might exercise jurisdiction over the matter of eliminating grade crossings, but that full power and authority over the matter of union terminal depot facilities has been vested in the Interstate Commerce Commission by the Act of 1920, amendatory to the Interstate Commerce Act.

The decision of the state Court consisted largely of a résumé of Sections 15a, Section 5, Section 1, subdivisions 18 to 22, inclusive, and Section 3 of the

Interstate Commerce Act as amended. The conclusion of the Court from this summary is completely expressed in the last paragraph of the decision which we quote:

> "(1) From the foregoing excerpts from the Act of Congress of 1920, amendatory of the Interstate Commerce law and from the authorities above cited, we arrive at the conclusion that full power and authority over the matter of union terminal depot facilities of the railroads who are largely engaged in interstate commerce, and who are the petitioners herein has been vested in the Interstate Commerce Commission under the terms of said Amendatory Act of 1920, and that by virtue thereof the Railroad Commission of California, one of the respondents herein, has been divested of the power, authority and jurisdiction over that subject, sought by it to be exercised in the several proceedings before it and by the order presented for review herein. This disposition of the primary inquiry involved in these proceedings renders unnecessary a discussion of the several subsidiary questions presented for our consideration by the briefs of counsel herein."

The Supreme Court of California is the Court of last resort in this state and there is no appeal from its decision except to this Court.

THE ISSUE.

The issue thus presented is one of jurisdiction.

Public necessity requires that a depot be built in Los Angeles. Who has jurisdiction to order the

railroads to furnish this facility, the state or the National government?

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

The authority of the Railroad Commission under state law to make regulations relative to union depots was drawn in question on the ground of its being repugnant to the Interstate Commerce Act, and the decision of the state Court was against its validity.

This decision was erroneous for the following reasons:

The California commission has authority under state law (Stat. 1915, Chap. 91, Sec. 36) to order the three carriers to erect a union depot. Prior to the enactment of the Transportation Act the carriers themselves admitted this to be so.

The Amendments of 1920 to the Interstate Commerce Act vest no jurisdiction in the Interstate Commission relative to the construction and use of new union depots.

The proviso at the end of paragraph 17, of Section 1 of the interstate act specifically reserves to the states the right to exercise its police powers "to require just and reasonable passenger service for intrastate business" except in so far as any state requirement may conflict with a lawful order of the Interstate Commission. (This proviso was not adverted to in the decision of the state Court.)

The Interstate Commission has made no order of any kind touching the matters here involved.

Wherefore your petitioner respectfully prays that a writ of *certiorari* may issue out of and under the seal of this Honorable Court directed to the Supreme Court of the State of California, commanding said Court to certify and send to this Honorable Court for its review and determination on a day certain to be therein designated, a full and complete transcript of the record in the proceeding in said Supreme Court of the State of California, entitled: *Southern Pacific Company, a Corporation, and Southern Pacific Railroad Company, a Corporation, Petitioners, v. Railroad Commission of the State of California et al., Respondents*, S. F. No. 10,111, pursuant to the Act of September 6, 1916, and that said judgment of said Supreme Court of the State of California may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and proper.

Dated, San Francisco,
March 21, 1923.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

HUGH GORDON,
WILLIAM W. CLARY,
Its Attorneys, San Francisco, California.

Appendix.

Extracts from Constitution of California:

Art. XII, Sec. 22. There is hereby created a Railroad Commission which shall consist of five members and which shall be known as the Railroad Commission of the State of California.

Art. XII, Sec. 23. Every private corporation, and every individual or association of individuals, owning, operating, managing, or controlling any commercial railroad, interurban railroad, street railroad, canal, pipe line, plant, or equipment, or any part of such railroad, canal, pipe line, plant, or equipment within this state, for the transportation or conveyance of passengers, or express matter, or freight of any kind, including crude oil, or for the transmission of telephone or telegraph messages, or for the production, generation, transmission, delivery or furnishing of heat, light, water or power or for the furnishing of storage or wharfage facilities, either directly or indirectly, to or for the public, and every common carrier, is hereby declared to be a public utility subject to such control and regulation by the Railroad Commission as may be provided by the legislature, and every class of private corporations, individuals, or association of individuals hereafter declared by the legislature to be public utilities shall likewise be subject to such control and regulation. The Railroad Commission shall have and exercise such power and jurisdiction to supervise and regulate public utilities, in the State of California, and to fix the rates to be charged for commodities furnished, or services rendered by public utilities as shall be conferred upon it by the legislature, and the right of the legislature to confer powers upon the Railroad Commission respecting pub-

lic utilities is hereby declared to be plenary and to be unlimited by any provision of this constitution.

Extracts from Public Utilities Act, Statutes 1915, p. 115:

Sec. 2. (*i*) The term "railroad," when used in this act, includes every commercial, interurban and other railway other than a street railroad, and each and every branch or extension thereof, by whatsoever power operated, together with all tracks, bridges, trestles, rights of way, subways, tunnels, stations, depots, union depots, ferries, yards, grounds, terminals, terminal facilities, structures and equipment, and all other real estate, fixtures and personal property of every kind used in connection therewith, owned, controlled, operated or managed for public use in the transportation of persons or property.

(*j*) The term "railroad corporation," when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any Court whatsoever, owning, controlling, operating or managing any railroad for compensation within this state.

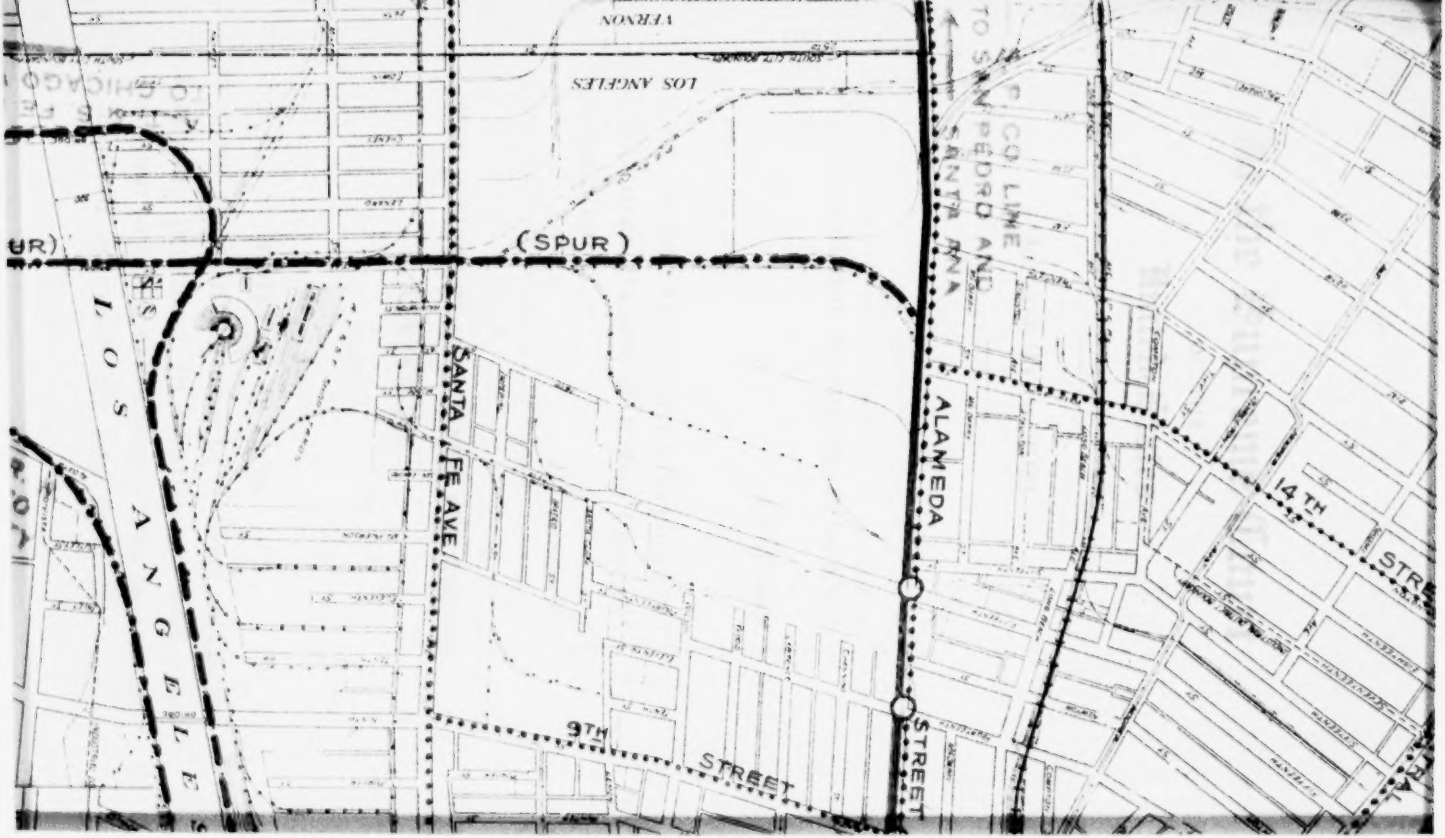
(*l*) The term "common carrier," when used in this act, includes every railroad corporation; street railroad corporation; express corporation; dispatch, sleeping car, dining car, drawing room car, freight, freight-line, refrigerator, oil, stock, fruit, car loaning, car renting, car loading and every other car corporation or person, their lessees, trustees, receivers or trustees appointed by any Court whatsoever, operating for compensation within this state.

(*dd*) The term "public utility," when used in this act, includes every common carrier, pipe line corporation, gas corporation, electrical corporation, telephone corporation, telegraph cor-

poration, water corporation, wharfinger, warehouseman, and heat corporation, where the service is performed for or the commodity delivered to the public or any portion thereof.

Sec. 36. Whatever the commission, after a hearing had upon its own motion or upon complaint, shall find that additions, extensions, repairs, or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any two or more public utilities ought reasonably to be made, or that a new structure or structures should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the commission shall make and serve an order directing that such additions, extensions, repairs, improvements or changes be made or such structure or structures be erected in the manner and within the time specified in said order. If the commission orders the erection of a new structure, it may also fix the site thereof. If any additions, extensions, repairs, improvements or changes, or any new structure or structures which the commission has ordered to be erected, require joint action by two or more public utilities, the commission shall notify the said public utilities that such additions, extensions, repairs, improvements or changes or new structure or structures have been ordered and that the same shall be made at their joint cost, whereupon the said public utilities shall have such reasonable time as the commission may grant within which to agree upon the portion or division of cost of such additions, extensions, repairs, improvements or changes or new structure or structures, which each shall bear. If at the expiration of such time such public utilities shall fail to file with the commission a statement that an agreement has been made for a division or ap-

portionment of the cost or expense of such additions, extensions, repairs, improvements or changes, or new structure or structures, the commission shall have authority, after further hearing, to make an order fixing the proportion of such cost or expense to be borne by each public utility and the manner in which the same shall be paid or secured.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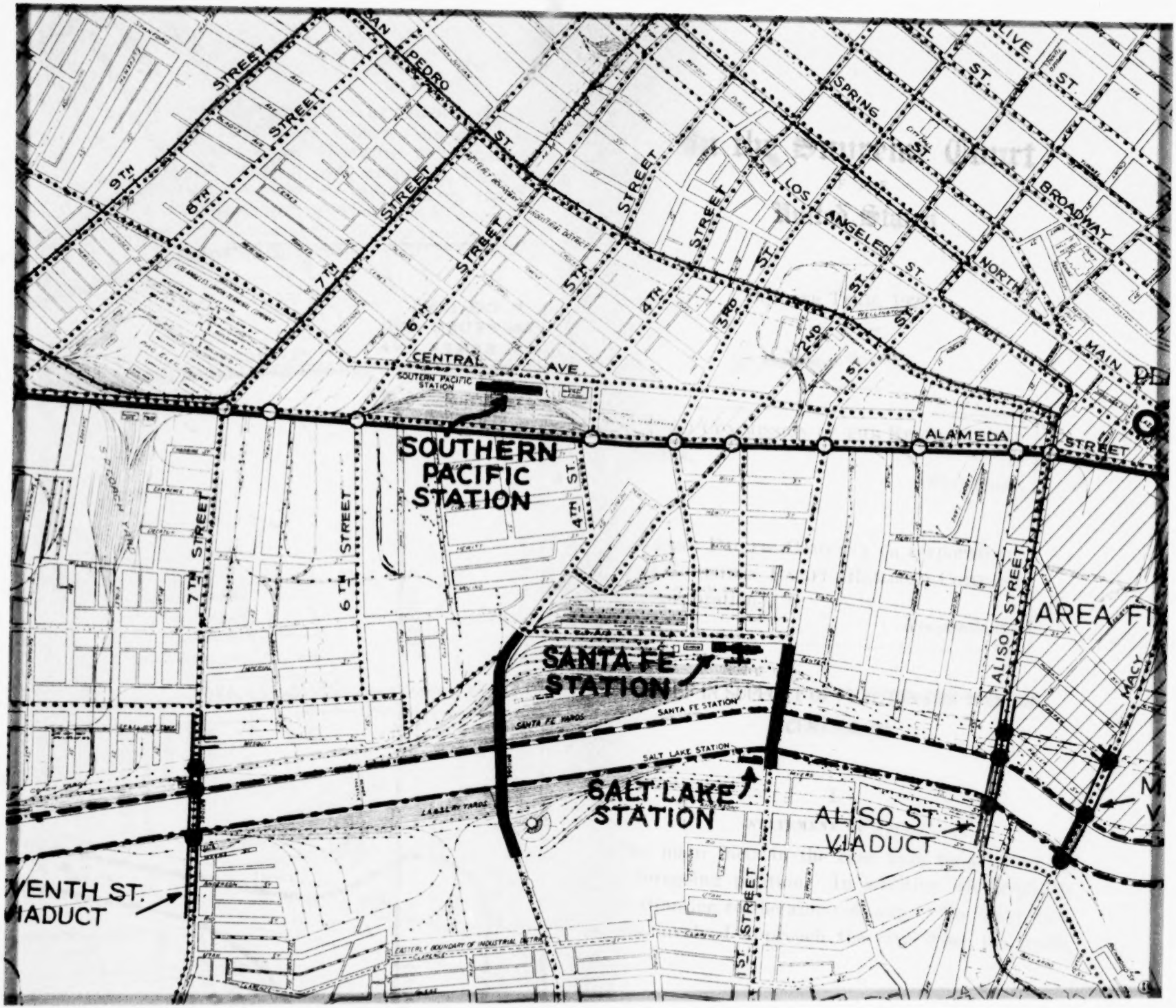
LOS ANGELES
(SPUR)
SANTA FE AVE
ALAMEDA
SANTA ANA
TO SAN PEDRO AND CO. LINE
14TH STREET
9TH STREET
STREET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SANTA FE STATION
SALT LAKE STATION
ALISO ST VIADUCT
ALAMEDA STREET
CENTRAL AVE
SOUTHERN PACIFIC STATION
SANTA FE STATION
SALT LAKE STATION
7TH STREET
6TH STREET
4TH ST
1ST STREET
ALISO STREET
SPRING ST
BROADWAY
LOS ANGELES ST
MAIN ST
NORTH
SAN PEDRO ST
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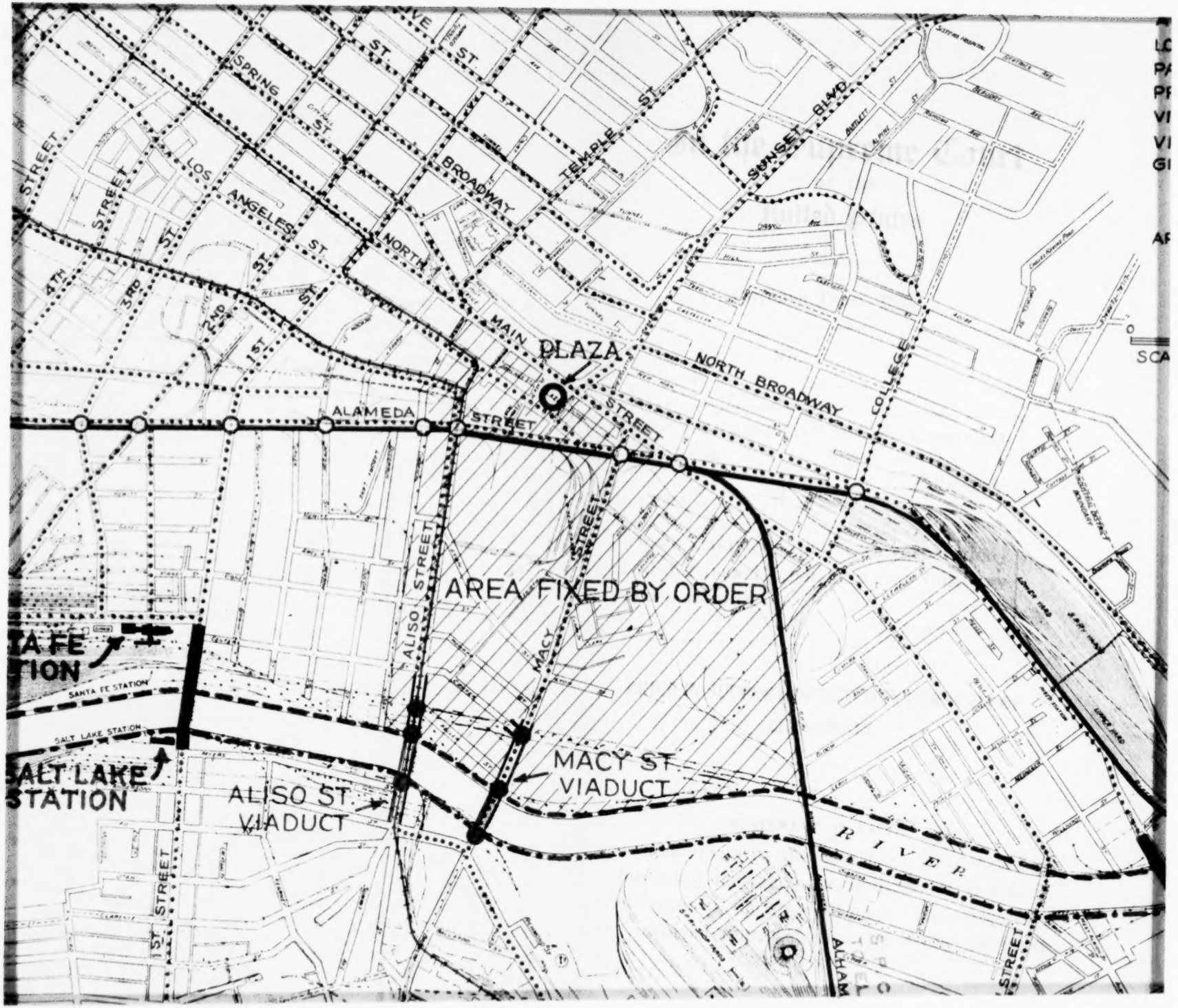
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TEMPLE ST.
SUNSET BLVD.
LOS ANGELES ST.
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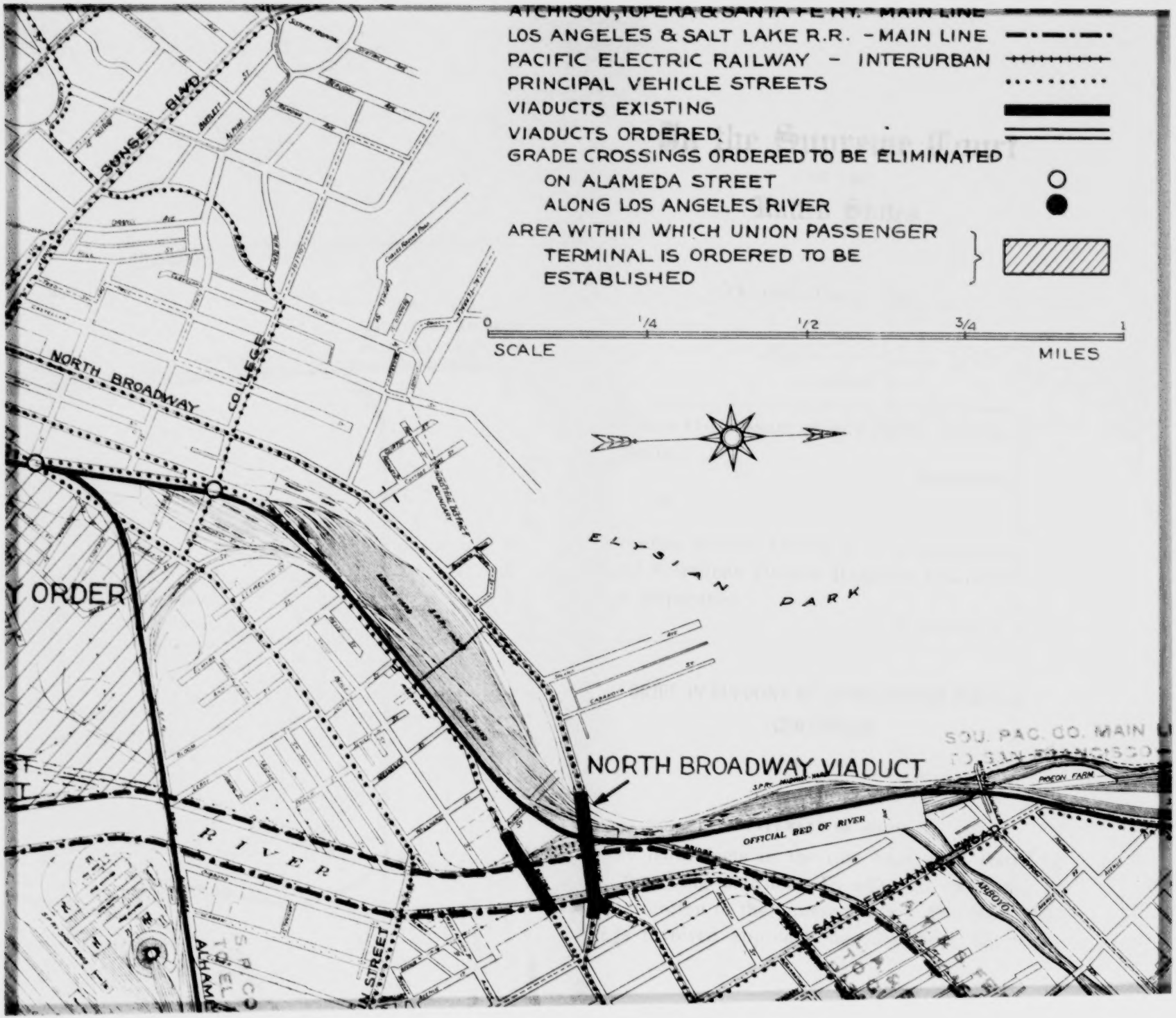
4TH STREET
3RD ST.
2ND ST.
1ST ST.
MAIN
PLAZA
NORTH BROADWAY
COLLEGE
ALAMEDA STREET
ALISO STREET
MACY STREET
AREA FIXED BY ORDER
SANTA FE STATION
SALT LAKE STATION
ALISO ST. VIADUCT
MACY ST. VIADUCT
1ST STREET
RIVER


ATCHISON, TOPEKA & SANTA FE RY. - MAIN LINE
LOS ANGELES & SALT LAKE R.R. - MAIN LINE
PACIFIC ELECTRIC RAILWAY - INTERURBAN
PRINCIPAL VEHICLE STREETS
VIADUCTS EXISTING
VIADUCTS ORDERED.
GRADE CROSSINGS ORDERED TO BE ELIMINATED
ON ALAMEDA STREET
ALONG LOS ANGELES RIVER
AREA WITHIN WHICH UNION PASSENGER TERMINAL IS ORDERED TO BE ESTABLISHED
0
1/4
1/2
3/4
1
SCALE
MILES
SUNSET BLVD.
NORTH BROADWAY
COLLEGE
ELYSIAN PARK
NORTH BROADWAY VIADUCT
OFFICIAL BED OF RIVER
RIVER
ALAMEDA
N. STREET
SAN FERNANDO
ARROYO
POSEN FARM

TO SAN PEDRO AND
SANTA ANA
ALAMEDA
SANTA FE AVE.
(SR 91)

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1922

No.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,

Petitioner,

vs.

SOUTHERN PACIFIC COMPANY (a corporation) and SOUTHERN PACIFIC RAILROAD COMPANY (a corporation),

Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

STATEMENT OF FACTS.

The main facts in the case have been stated in the foregoing petition. In addition we desire to call attention to the annexed map. The three railroads involved approach the city from the north

and come together at a point marked "North Broadway Viaduct" near the top of the map. All three roads pass under this viaduct. From this point the "Salt Lake" and "Santa Fe" lines follow the bed of the Los Angeles River crossing important public highways at grade at Macy Street, Aliso Street and Seventh Street. The order of the commission requires these grade crossings to be eliminated by the construction of viaducts at the points marked on the map "Macy St. Viaduct", "Aliso St. Viaduct" and "Seventh St. Viaduct."

The Southern Pacific line from San Francisco does not follow the river bed but turns after passing under the North Broadway Viaduct and runs in a southwesterly direction till it reaches the north end of Alameda Street. From that point it runs directly south through the city on Alameda Street at grade all the way. The Southern Pacific line from El Paso comes into the city from the east on the avenue marked Alhambra Avenue. It joins the other line just north of "plaza". Alameda Street is a main highway or thorofare through the city and one of the most heavily traveled streets in the city. All the main line traffic of the Southern Pacific lines both from east and north run through Los Angeles at grade longitudinally upon and along this street the rails being flush with the pavement most of the way. Alameda Street is also crossed by 17 other public streets at grade. Some of these are very heavily traveled streets and several of

them carry street and electric interurban cars which cross the Southern Pacific tracks at grade. These crossings are marked by hollow red circles on the map. The commission ordered the Southern Pacific Company to eliminate these grade crossings by removing all traffic from Alameda Street except limited switching movements at night.

The district marked on the map with red diagonal lines and designated "area fixed by the order" is the district within which the carriers were ordered to construct a union depot. It is referred to in the record frequently as the "plaza site" the plaza being a small park in one corner of this area.

It will be seen that the Salt Lake and Santa Fe lines border this designated area and there would be no difficulty in constructing approaches to a union depot from the main lines of these roads. It will also be seen that the San Francisco and El Paso lines of the Southern Pacific pass directly thru this area so that a depot in this area would be easily approached by these lines. The Southern Pacific traffic from the south comes into the city at a point marked "To San Pedro and Santa Ana." But a small proportion of the total Southern Pacific traffic comes in from this direction. It is obvious from an inspection of the map that this southerly traffic can reach the proposed depot site in at least three different ways; by a new line which the Southern Pacific might construct along the river bed reaching the depot in the same way that the southerly lines of the Salt Lake and Santa Fe

reach it; by some arrangement with either the Salt Lake or Santa Fe for a joint use of tracks for southerly traffic; by an amendment to the commission's order permitting the southerly traffic to come into the depot upon the present tracks along Alameda Street.

The order of the commission did not designate any specific plan but required the carriers to prepare their own plans. This has not yet been done.

II.

SPECIFICATION OF ERRORS RELIED UPON.

The errors upon which petitioner relies for the issuance of the writ and for reversal of the judgment were outlined in the foregoing petition. For convenience we will briefly restate them.

The California commission has authority under state law (Section 36, Public Utilities Act, see appendix) to order the three railroad companies to erect a union depot.

The state Court erroneously construed the federal statute amendatory of the Interstate Commerce Act as having deprived the state of this jurisdiction and vested it in the Interstate Commerce Commission.

The state Court failed to give effect to the proviso of Section 1, paragraph 17 of the amended Interstate Commerce Act and to the principle an-

nounced in the case of *Missouri Pacific Railway Company v. Larrabee Flour Mill Company*, 211 U. S. 612.

The subject will be discussed under two heads:

1. The amendments of 1920 to the Interstate Commerce Act vest no power in the Interstate Commerce Commission relative to union passenger depots.

2. If the amendments of 1920 should be construed to cover the subject of union depots nevertheless the state's power remains unimpaired and the state commission's order is valid unless the interstate commission makes an inconsistent order.

III.

ARGUMENT.

1. The Amendments of 1920 to the Interstate Commerce Act vest no power in the Interstate Commerce Commission relative to union passenger depots.

The state Court based its decision that the interstate commission has exclusive jurisdiction over union depot facilities mainly upon Section 15a: Section 5, paragraphs 4 and 5: Section 1, paragraphs 3, 10, 1, 18, 21, 22; Section 3, paragraphs 3 and 4 and Section 1, paragraph 20, of the Amended Interstate Commerce Act. A brief reference to these provisions in the order discussed by the state Court is essential.

Section 15a. This section is referred to only as showing generally the greatly enlarged powers of the interstate commission and its affirmative duty to maintain an adequate railway service for the people of the United States.

Section 5. (Pars. 4 and 5.) These paragraphs relate to the general plan for the consolidation of railway properties of the United States into a limited number of systems. They are quoted in the decision as being expressive of the enlarged scope and purposes of the Act.

Section 1. (Pars. 3 and 10.) These provisions are referred to to show the definitions of the terms "railroad" and "car service."

None of the sections thus far mentioned make any reference to depots or terminal facilities.

Section 1. (Par. 1.) This section refers only to cases where the commission is of the opinion that an emergency exists. It gives the interstate commission powers when an emergency exists to (a) suspend established rules, (b) to make directions relative to car service, (c) to require joint use of terminals, including main line tracks for a reasonable distance outside of such terminals. This language does not authorize the interstate commission to require the erection of a new union depot for permanent use but refers to the joint use during emergencies of existing terminals. In the present case an emergency did not exist and the state

commission did not order the joint use of any existing terminal or any main line tracks.

Section 1. (Par. 18.) This provision refers to the construction, extension and abandonment of railroad lines and provides for the issuance of certificates of public convenience and necessity therefor. It was fully considered by this Court in *Texas v. Eastern Texas Ry. Co.*, U. S. Adv. Ops. 1921-22, p. 313. In the argument before the state Court and in the Court's decision, considerable importance was attached to this paragraph because the order of the state commission requires in connection with the elimination of grade crossings, the abandonment of certain traffic on Alameda Street within the City of Los Angeles. It was said that subdivision 18 of Section 1 deprived the state of the power to require the abandonment of any part of a line of railroad.

Reference to the actual order (Transcript, pp. 142-151 inc.) will show that the commission ordered neither the construction or abandonment of a "line of railroad." True, the erection of a new union depot and the elimination of grade crossings will require a rearrangement of traffic. Some new track may have to be laid and some old track abandoned. Reference to the map annexed to the petition will show that the amount of new track necessary to construct to enable the three roads to reach the area specified for the depot is very small. When it is all done there will be no change in the service

rendered to the public except that it will be improved.

The Interstate Commerce Commission has held that relocations of trackage of the kind here in question, where the changes have no effect on the service to the public, do not constitute either the construction or abandonment of "lines of railroad" within the meaning of par. 18, Sec. 1 of the Interstate Commerce Act.

> *In the matter of the Application of the Philadelphia, Newtown & New York Railroad for a certificate of public convenience and necessity, 67 I. C. C. Rep. 252, decided March 11, 1921.*
>
> *Application of the Pearl Valley Railroad Company, 67 I. C. C. Rep. 748, decided June 14, 1921.*

In the latter case 2.62 miles of main line track were abandoned but inasmuch as the service to the public was not affected no certificate was deemed necessary.

This construction is further borne out by the case of *Texas v. Eastern Texas Railroad Co.* (U. S. Adv. Op. 1921-22, 313). This Court in that case had before it paragraph 18, Section 1, of the Interstate Commerce Act. The question was, to what extent the interstate commission had jurisdiction under the amendments of 1920 over the abandonment of a railroad doing both interstate and intrastate commerce.

Referring to paragraph 18 and subsequent provisions, the Court said:

> "By them Congress has undertaken to regulate the construction and acquisition of new or additional lines of railroad and the extension and abandonment of old lines."

The "line of railroad" which the Court was discussing was a line 30 miles long. Its abandonment meant that a large territory and many people would cease to have any railroad service (by the road in question) at all.

The Supreme Court referred to the application as "an application for a certificate authorizing it to abandon and cease operating its road." This implies a complete cessation of service. Here, the carriers will not abandon or cease operating their roads or any part of them. They will merely shift their lines in such a way as to carry on the same operations they do now, but with more safety and convenience to the public.

Section 1. (Pars. 21 and 22.) Paragraph 21 authorizes the interstate commission to require any carrier to provide adequate facilities for performing "its car service as that term is defined in the Act" and to extend its line or lines. The term "car service" is defined in paragraph 10 of Section 1 and has to do with the supply, distribution and exchange of cars and locomotives. The clause as to extension of lines is similar to that found in paragraph 18 of Section 1, except that paragraph 18 applies to cases where permission to extend is

sought by the carrier and paragraph 21 applies to cases where the carrier is ordered to extend by the commission upon its own initiative or upon complaint. In neither case is a mere rearrangement of existing trackage an extension of a "line of railroad" within the meaning of these provisions. Paragraph 22 exempts from the authority of the commission, conferred by paragraphs 18 to 21 inclusive, all construction or abandonment of spurs, industrial tracks, etc., located wholly within one state.

Section 3. (Paragraphs 3 and 4.) Paragraph 3 refers to the interchange of traffic between different carriers. It was not claimed in any of the briefs before the state Court that the order of the state commission requires any interchange of traffic and in our opinion this paragraph has no bearing on the issue before the Court.

Paragraph 4 refers to existing terminal facilities. The paragraph reads as follows:

> "If the commission finds it to be in the public interest and to be practicable, without substantially impairing the ability of a carrier owning or entitled to the enjoyment of terminal facilities to handle its own business, it shall have power to require the use of any such terminal facilities, including main-line track or tracks for a reasonable distance outside of such terminal, of any carrier, by another carrier or other carriers, on such terms and for such compensation as the carriers affected may agree upon, or, in the event of a failure to agree on such terms as the commission may fix as just and reasonable for the use so required, to be

ascertained on the principle controlling compensation in condemnation proceedings. Such compensation shall be paid or adequately secured before the enjoyment of the use may be commenced. If under this paragraph the use of such terminal facilities of any carrier is required to be given to another carrier or other carriers, and the carrier whose terminal facilities are required to be so used is not satisfied with the terms fixed for such use, or if the amount of compensation so fixed is not duly and promptly paid, the carrier whose terminal facilities have thus been required to be given to another carrier or other carriers shall be entitled to recover, by suit or action against such other carrier or carriers, proper damages for any injuries sustained by it as the result of compliance with such requirement, or just compensation for such use, or both, as the case may be."

A comparison of this paragraph with Section 36 of the California Public Utilities Act will show that there is no conflict or inconsistency between them. Paragraph 4 refers to a "carrier owning or entitled to the enjoyment of terminal facilities." It provides for the use of the "terminal facilities including main line track for a reasonable distance outside such terminal" of one carrier by another carrier. It provides that "the carrier whose terminal facilities are required to be so used" may recover compensation. These expressions plainly mean existing terminal facilities. The order of the state commission requires the erection of a new union terminal at a new site, considerably removed from any of the existing depots. Obviously there

can be no joint use of the existing terminals of one carrier by another under this order. Instead, the matter falls within the terms of Section 36 of the California Act. In this statute there is specific provision for the erection of "a new structure or structures"; for "fixing the site thereof" and for "joint action" in erecting any "new structure."

It may be claimed that the state commission's order cannot be obeyed without a joint use of certain existing facilities such as main line tracks; and that the order is for that reason repugnant to the provisions of paragraph 4. This claim is based solely on the fact (set forth in the petition) that four plans for a depot at the site finally designated were proposed by witnesses and all these plans provided for some joint use of main line trackage. As stated in the decision of the commission (see Petition p. 5) and as is obvious from the commission's order the commission did not order the railroad companies to carry out any of these proposed plans. It simply ordered them to construct a depot somewhere within a large area according to plans which they themselves were to prepare. To say that no possible plan for a union depot can be devised which does not require a joint use of tracks is merely to speculate in advance of any attempt to prepare final plans. We may concede that the carriers would find it less expensive to comply with the order if they would arrange for some joint use of trackage. The witnesses who presented the plans referred to were

not considering the effect paragraph 4, Section 3 of the Interstate Commerce Act might have on the jurisdiction of the state commission if a joint use of tracks was had; they were merely considering the simplest way from an engineering standpoint of rearranging the tracks so as to bring the various lines to the proposed depot site and eliminate the grade crossings on Alameda Street. These plans were prepared and submitted at hearings held prior to the enactments of 1920. At that time the question of constructing a depot without joint use of tracks was not being considered. Subsequent to 1920 the commission inspected the premises and maps and made its order. An inspection of the map attached to the petition herein will show clearly that there is no obstacle to the construction of a union depot within the area designated without the joint use of existing tracks or other facilities. In view of the facts that no joint use of facilities was ordered by the commission; that no final plans have been prepared and that no attempt has been made to comply with the order, we submit that the objection that the order is repugnant to paragraph 4 of Section 3 because it will necessitate a joint use of tracks is wholly inconsistent and unfounded.

Section 1. (Paragraph 20). The last reference made by the state Court to the interstate act is to paragraph 20, Section 1. This paragraph prohibits the railroads from making any constructions or abandonments of lines of railroad without the

consent of the interstate commission. The prohibitions of the paragraph refer expressly to paragraphs 18 and 19 of Section 1. They do not refer to existing terminal facilities which are covered by Section 3, paragraph 4. The state Court erroneously construed paragraph 20 to apply to "the extension of railroad facilities and the abandonment of other railroad facilities, *including terminals.*" Upon this erroneous construction the Court based its conclusion that Congress has fully occupied the field of regulation "of the extension of terminal facilities."

The Court also erroneously construed the commission's order as requiring extensions and abandonment of lines of railroad. As already shown the order required no construction or extension of new lines or abandonment of old lines within the meaning of the act as construed by the interstate commission. Nor did the order require any joint use of facilities. The prohibitions of Section 20 therefore do not terminate the power of the state commission to make the order which it did make.

We have discussed all the sections of the interstate act relied upon by the Court and submit that not one of them vests in the interstate commission the power to order carriers to erect a new union depot or deprives the state of the power to do so. The fact that many kinds of regulations are specifically provided for in the act, as for instance interchange of traffic, switch connections, car service, securities, extensions into new territory, consolidation

of lines, etc., while the act is silent as to any regulation concerning new union depots indicates that the latter are not covered by the act. The familiar principle that the mention of specific matters excludes others is applicable here and excludes any possibility of the jurisdiction over new union depots being conferred on the interstate commission by the general provisions referred to in the above resume as being indicative of the scope of the act.

If, after plans are prepared for a union depot in compliance with the state commission's order, it should be deemed advisable to invoke the jurisdiction of the Interstate Commerce Commission in connection with any part of the work such as a joint use of tracks or for the issuance of securities, there is no reason why application therefor cannot be made to the interstate commission at that time. The present validity of the state commission's order is not affected by this possibility. Under well settled state law an order of the Railroad Commission is not invalid merely because the order cannot be carried out until some other public authority takes additional or concurrent action.

Motor Transit Company v. Railroad Commission, 64 Cal. Dec. 278, 209 Pac. 586;

Oro Electric Company v. Railroad Commission, 169 Cal. 466, 147 Pac. 118;

Turner Creamery Co. v. Chicago, Milwaukee & St. Paul R. R., 154 N. W. 819, P. U. R. 1916 A 1083.

It is our belief that the provisions of the Act above referred to are so clear that there can be no doubt as to their meaning. We are mindful of the rule that when the language of an act is clear to the Court, the legislative history of the act cannot control the interpretation. If, however, there should exist any doubt in the mind of the Court as to whether the sections above outlined deprive the state of its jurisdiction relative to union depots, we ask the Court's attention to the Congressional Record of November 15, 1919.

While the Esch-Cummins bill was being debated on the floor of the House of Representatives, Congressman McClintic of Oklahoma offered the following amendment (Congressional Record, November 15, 1919, p. 9067):

> "Provided, further, that the Commission is hereby given authority to require a carrier to maintain its present arrangement or to make new arrangements relative to the joint use of depots, upon such terms as shall be found by the Commission to be just and reasonable. No carrier shall be allowed to discontinue the use of a depot in connection with another carrier until proper application has been made to the Commission."

The purpose of this amendment, as explained by Congressman McClintic (pp. 9067, 9068), was to give the Interstate Commerce Commission jurisdiction over union passenger depots, largely for the purpose of preventing the railroad companies from tearing apart the unification of passenger depots so extensively established by the Government during

the federal operation of the railroads. Chairman Esch opposed the adoption of the amendment on the ground that jurisdiction over such matters had always been vested in the various states and should continue to be exercised by them. Chairman Esch said (Congressional Record, November 15, 1919, p. 9068):

> "Mr. Chairman, the matter which the gentleman from Oklahoma seeks to reach by his amendment lies almost wholly within the police power of the several states. There have been amendments offered to this bill seeking to preserve such police powers. The committee in framing the bill has sought not to encroach upon such powers. The matter of depots and joint use of depots is practically in the jurisdiction of the state commissions and all but one of the states have such commissions. In such small matters the detail should be left within the jurisdiction of the state authorities, who know the situation, know the conditions and know how best to meet the needs. There is, however, a provision in this bill providing for the joint use of terminals."

Mr. McClintic thereupon offered to withdraw the amendment, but another member insisted on having a vote thereon. Thereafter his amendment, which would have conferred upon the Interstate Commerce Commission jurisdiction over union passenger depots, was rejected (Congressional Record, November 15, 1919, p. 9071), thereby clearly indicating an intention that jurisdiction over union passenger depots should not be taken away from the states.

The above quotations refer only to the rejection of the amendment on the floor of Congress and to the

statement of the chairman of the committee having the bill in charge. It has been held that the courts may look to both these sources when in doubt as to the meaning of a statute.

United States v. Delaware & Hudson Co., 213 U. S. 366;

U. S. Printing Co. v. Deering, U. S. Adv. Op. 1920-21, pp. 176, 182.

2. If the Amendments of 1920 should be construed to cover the subject of union depots nevertheless the state's power remains unimpaired and the State Commission's Order is valid unless the Interstate Commission makes an inconsistent order.

In all its discussion of the amended Interstate Commerce Act the state Court made no mention of the proviso at the close of paragraph 17, Section 1. This proviso reads as follows:

> "Provided, however, that nothing in this act, shall impair or affect the right of a state, in the exercise of its police power, to require just and reasonable freight and passenger service for intrastate business, except in so far as such requirement is inconsistent with any lawful order of the commission made under the provisions of this act."

This proviso in plain terms preserves the police power of the state to require just and reasonable freight and passenger service for *intrastate* business. The fact that a carrier may also be engaged largely in interstate business does not deprive the state of this reserved power *unless* the state makes a requirement that is

"inconsistent with any lawful order of the commission (interstate) made under the provisions of this act."

The order made by the California commission was to require just and reasonable service of three railroads engaged largely in intrastate business. This order was certainly not inconsistent with any lawful order of the Interstate Commerce Commission for the obvious reason that the interstate body has made no order at all. Until it makes an order and unless the requirement of the state commission conflicts with that order, the state will retain full power to require just and reasonable passenger service of any railroad doing intrastate business regardless of the fact that such road also does interstate business.

The proviso in paragraph 17 is in effect a congressional enactment of the principle announced in *Missouri Pacific Ry. Co. v. Larrabee Flour Mill Co.*, 211 U. S. 612, viz., that even when Congress has entered a particular field of interstate commerce and has authorized the Interstate Commerce Commission to exercise jurisdiction therein, nevertheless unless the matter is one to be handled by general rule or regulation, the states may continue to act as to particular situations unless and until the interstate commission takes action as to such particular situations.

In the Larrabee case the state Court, by a writ of mandamus, ordered the Missouri Pacific Railroad Company to transfer and return cars loaded and unloaded from the line of the Santa Fe Railroad to

the mill and elevator of the Larrabee Flour Mills Company. The Missouri Pacific line was engaged in interstate commerce and about three-fifths of the flour of the mill company was shipped out of the state.

The contention was made that the Missouri Pacific and Santa Fe companies were common carriers engaged in interstate commerce, and, as such, were subject to the control of Congress, and therefore not amenable to the power of the state. At that time (1908), the Interstate Commerce Act was in force and the Interstate Commerce Commission had power to act in respect to the particular matters involved.

On principle, therefore, the situation was identical with that here under discussion. A requirement relative to service had been made by the state. The railroad involved was engaged largely in interstate commerce. In fact, the requirement made by the state acted directly upon interstate commerce. Congress had acted by creating the Interstate Commerce Commission and *vesting it with full power to regulate the very matter which was at issue.*

This Court said:

> "On the other hand, it is said that Congress has already acted,—has created the Interstate Commerce Commission, and given to it a large measure of control over interstate commerce. But the fact that Congress has intrusted power to that commission does not, in the absence of action by it, change the rule which existed prior to the creation of the commission. Congress could always regulate interstate commerce, and could make specific provisions in reference

thereto, and yet this has not been held to interfere with the power of the state in these incidental matters. A mere delegation by Congress to the commission of a like power has no greater effect, and does not of itself disturb the authority of the state. It is not contended that the commission has taken any action in respect to the particular matters involved. It may never do so, and no one can, in advance, anticipate what it will do when it acts."

In the present instance the state Court, in its decision, said that this case of *Missouri v. Larrabee* is inapplicable because it was decided in 1909, several years prior to the attempt on the part of Congress to invest the Interstate Commerce Commission with jurisdiction over extensions or changes in interstate railroad lines.

The power of Congress to regulate interstate commerce, although supreme and exclusive, remains dormant until actually exercised. (Chief Justice Marshall in *Willson v. Black Bird Creek Marsh*, 2 Pet. 251; 7 L. ed. 414.) But the mere enactment of laws by Congress does not arouse this dormant power unless those laws are of such nature as to exclude any action by the states.

Cooley v. Port Wardens, 12 How. 316;

Sturges v. Crowinshield, 4 Wheat. 193;

Cleveland etc. v. Illinois, 177 U. S. 514; 44 L. ed. 868;

No. Pac. R. R. Co. v. Washington, 222 U. S. 370; 56 L. ed. 237;

Atl. Coast Line Ry. v. State of Georgia, 234 U. S. 280; 50 L. ed. 1312.

A law of Congress forbidding train crews to remain on duty more than 16 consecutive hours was a complete exercise of the dormant power to regulate that phase of the interstate commerce. Nothing remained to be done to make the law effective. It applied instantly to every train crew on every train engaged in interstate commerce regardless of the fact that such a crew might at the same time be engaged in intrastate commerce. No hearing by a commission or findings and orders were necessary. Nothing the state could do would add to or take away from the scope of the requirement. The hitherto dormant power of Congress was fully exercised, and this field of regulation fully occupied. (*No. Pac. R. R. Co. v. Washington*, 222 U. S. 370.)

Not so with depots. Before a depot can be required there must be an investigation of particular conditions and hearing, findings and a specific order must be made. Congress might conceivably do this itself. But if it delegates this power to a subordinate commission, still the power remains dormant until that subordinate commission exercises it.

In the *Larrabee* case Congress had delegated to the Interstate Commerce Commission powers of control over the particular matter in question. But that commission had not acted, and, as the Court said, it might never act, therefore, the federal power still remained dormant, and the state was free to make those regulations conducive to the welfare of its citizens. We submit that what the Court said in the *Larrabee* case applies as well to the delegations

of power made by Congress in the Act of 1920 as to those made by earlier enactments.

The case chiefly relied upon by the state Court is *People ex rel New York Central Railroad Company v. Public Service Commission*, 233 N. Y. 113. It was cited as a case approaching identity with the case at bar. In that case the state commission ordered two railroads to make track connections to permit interchange of freight.

We submit that the case is not in point because Section 3 of paragraph 3 of the Interstate Act as amended specifically provides for the interchange of traffic and the New York Court held that the New York law did not authorize the state commission to make such a requirement. Here the situation is exactly opposite. The interstate act does not provide for new union depots and the California law specifically does so.

For the reasons above set forth petitioner respectfully asks that the petition for a writ of *certiorari* be granted.

Dated, San Francisco,
March 21, 1923.

Respectfully submitted,

HUGH GORDON,
WILLIAM W. CLARY,
Attorneys for Petitioner.

NOTICE OF DATE FOR SUBMISSION.

To Southern Pacific Company and Southern Pacific Railroad Company, Respondents herein and to C. W. Durbrow and Wm. F. Herrin, Esqs., San Francisco, California, their Attorneys:

Please take notice that the foregoing petition for writ of certiorari will be presented to the Supreme Court of the United States on Monday, the 16th day of April, 1923.

Dated, San Francisco,
March 21, 1923.

HUGH GORDON,
WILLIAM W. CLARY,
Attorneys for Petitioner.

ADMISSION OF SERVICE.

Due service and receipt of a copy of the within petition for writ of certiorari to the Supreme Court of the State of California, brief in support thereof and notice of date for submission thereof is hereby admitted this 23rd day of March, 1923.

C. W. DURBROW,
WM. F. HERRIN,
Attorneys for Respondent.

Copy

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WM. R. STANSB
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IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term, 1922.

No. ~~984~~ 283

Railroad Commission of the State of California,
Petitioner,
vs.
Southern Pacific Company (a Corporation), and Southern Pacific Railroad Company (a Corporation),
Respondent.

RESPONDENT'S BRIEF

In Answer to Petition for Writ of Certiorari to the Supreme Court of the State of California and Brief in Support Thereof.

C. W. DURBROW,
E. W. CAMP,
A. S. HALSTED,
CHAS. H. BATES,
Attorneys for Respondent.

W. F. HERRIN,
Of Counsel.

Parker, Stone & Baird Co., Law Printers, 233 New High St., Los Angeles.

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NOTE.

The petitioner, Railroad Commission of the state of California, has filed three petitions for writs of certiorari to the Supreme Court of the state of California, entitled as follows:

(1) Railroad Commission of the state of California, petitioner, vs. Southern Pacific Company (a corporation), and Southern Pacific Railroad Company (a corporation), respondent.

(2) Railroad Commission of the state of California, petitioner, vs. Atchison, Topeka & Santa Fe Railway Company (a corporation), respondent.

(3) Railroad Commission of the state of California, petitioner, vs. Los Angeles & Salt Lake Railroad Company (a corporation), respondent.

These petitions and the briefs accompanying them are identical in subject matter and differ only in the titles of the proceedings. In all three of these cases the transcript of record is the same. An original of this brief is therefore filed in each of the three cases, together with the usual number of copies. These bear the titles, however, of the proceedings in which filed.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term, 1922.

No.....

Railroad Commission of the State of California,
Petitioner,

vs.

Southern Pacific Company (a Corporation), and Southern Pacific Railroad Company (a Corporation),
Respondent.

RESPONDENT'S BRIEF

In Answer to Petition for Writ of Certiorari to the Supreme Court of the State of California and Brief in Support Thereof.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

While a respondent is not required by the statutes or rules of court to file a brief in answer to a petition for a writ of certiorari, the

instructions relative to applications for writs of certiorari, under the Acts of March 3rd, 1891, and September 6th, 1916, contemplate his doing if he so desires. In this case the respondent deems it desirable to do so, primarily for the purpose of pointing out just what facilities of the railroads will have to be abandoned if the order of the Railroad Commission of the state of California is carried out, and secondly, what extensions and joint trackage arrangements will have to be provided in order to comply with the terms of that order. Jurisdiction over these matters is expressly vested in the Interstate Commerce Commission under the Transportation Act, 1920, and for that reason alone the decision of the Supreme Court of the state of California is clearly right. These facts and conclusions may be amplified.

Abandonment of Existing Facilities.

Let us refer to the map attached to the petitoin. All trains of the Southern Pacific, upon its line to San Pedro and the Harbor District, and all of its trains to and from Santa Ana and its several branches in Orange county, now move along Alameda street. All passenger trains to and from San Francisco and other points to the north, and all passenger trains upon its main line to El Paso, move along Alameda street northerly of Fourth street. These "operations"

along Alameda street, a distance of approximately three miles, according to the terms of the order must be discontinued and abandoned, only local switching being permitted.

The passenger station of the Southern Pacific is located at the intersection of Fifth street and Central avenue. This is a modern structure, completed in 1915. While the order does not expressly provide for its abandonment its effect is precisely that, for if passenger trains cannot be run into and out of such a station it thereupon ceases to be a passenger station.

The Santa Fe and Salt Lake passenger stations are located respectively westerly and easterly of the Los Angeles River, near its intersection with First street. While it is conceivably possible that these two stations might still be used as such after completion of a union depot in the Plaza district, as contemplated by the Railroad Commission, the fact nevertheless remains that in practical effect the enforcement of the order will render these properties useless and will result in their abandonment.

Extensions and Joint Trackage Arrangements Necessary Under the Railroad Commission's Order.

Since all train movements except local switching are ordered discontinued along Alameda street, the Southern Pacific would have to seek a new route through the city, north to south.

What routes are open to it?

It might make use of the tracks of the Santa Fe along the westerly bank of the river—the Santa Fe's principal terminal facilities in the city—by the construction of connecting tracks between the two lines in the southerly portion of the city, and the construction of other connecting tracks in the north central portion of the city.

Or it might make use of the tracks of the Salt Lake along the easterly bank of the river —the latter's principal terminal facilities in the city—by the construction of similar connecting tracks. This would, however, occasion crossing and again recrossing the river.

Or it might build a new line of its own through the city, but this is entirely impracticable due to the enormous expense of constructing a line of such length through the heart of the industrial section of a large city.

The Salt Lake would have to build an extension or new line across the river to reach the area defined by the commission as the site for a union station.

The Southern Pacific main line to and from the east borders this site on the north as does the Santa Fe on the east, and it is conceivably possible to bring trains upon those lines into a depot located within the area mentioned, without serious operating difficulties. However, it

would be extremely difficult to handle Southern Pacific trains from and to the north, into and out of such a station without some switching back and forth, which is of course contrary to good operating methods. This objection might be obviated by the construction of other extensions of line, but this only emphasizes the fact that the order of the Railroad Commission does contemplate, actually and in practical effect, extensions of very considerable magnitude, together with joint use of certain main line tracks and terminal facilities now separately owned and operated.

The petitioner seeks to avoid the issue raised by this situation, by saying that the abandonment of facilities and the construction of extensions and the joint use of facilities are not contemplated by the express terms of the order as made, but the fact remains that such is the necessary effect of the order. The Railroad Commission has no power to do indirectly what it cannot do directly.

We shall not discuss in this brief constitutional questions respecting an order of any commission directing a public utility to expend large sums in acquiring new property and devoting it to a public use.

Corrections in Petitioner's Statement of Facts.

On pages 15 and 16 of petitioner's brief it is stated:

"The three railroads involved approach the city from the north and come together at a point marked 'North Broadway Viaduct' near the top of the map. All three roads pass under this viaduct."

While literally true, the statement gives a somewhat false conception of the true situation. The Southern Pacific trains to the north pass this point, as do those of the Santa Fe via Pasadena. The Salt Lake has but a branch to Pasadena and that is the line referred to. All of the Santa Fe trains on its main line to the east through Fullerton, and to San Diego, move through the southerly portion of the city, as do those of the Southern Pacific on its Santa Ana and San Pedro branches. All of the main line trains of the Salt Lake and its San Pedro branch line trains enter and leave through the southerly portion of the city. The main line of the Southern Pacific to the east does not pass near the North Broadway viaduct.

On page 17 of petitioner's brief it is stated that the Salt Lake line borders the area prescribed by the Railroad Commission. This is not the fact, for it will require the construction of an extension of the Salt Lake line crossing the river, to reach the area mentioned.

The Transportation Act of 1920 Vests in the Interstate Commerce Commission Sole Power and Authority to Order or Permit Joint Use of Railroad Facilities. That Field Is Thereby Completely Occupied, to the Exclusion of any Right of State Commissions to Act in the Premises.

In the decision of the Supreme Court of California, of which petitioner seeks a review, is a clear exposition of the new policy of the federal law with reference to the railroads. And in the recent cases of Akron, Canton & Youngstown Railway Company *et al.*, v. The United States *et al.*, (The New England Divisions' case), decided by this court on February 19th, last, and in Railroad Commission of Wisconsin v. Chicago, Burlington & Quincy R. R. Company, 257 U. S. 563, this court has in no uncertain language recognized and given effect to the greatly broadened powers of the Interstate Commerce Commission, under the Transportation Act, 1920.

The Supreme Court of the state of California has recognized in the instant case that the order of the Railroad Commission, requiring as it did the construction and extension of lines of railroad, the abandonment of operations upon a very important section of main line of one of the railroads, and the joint use of terminal fa-

cilities and the construction of certain extensions, infringed upon these newly granted powers of the Interstate Commerce Commission.

As to joint use of terminal facilities: Petitioner's brief says, page 26, that the order does not require any joint use of facilities; but this seems to be intended to apply to present or existing facilities and to admit that there is to be and must be a joint use of the new station and the facilities appurtenant thereto.

It is clear that under the provisions of paragraphs 3 and 4 of section 3 of the Interstate Commerce Act the power to order such joint use of a terminal is now vested in the Interstate Commerce Commission. In answer to this, the petitioner cites the case of Missouri etc. v. Larrabee etc., 211 U. S. 612, 53 L. Ed. 352, in support of the proposition that although the act may have vested such power in the Interstate Commerce Commission, yet until that commission asserts and exercises the power the state's authority abides the same as if Congress had not acted at all. In other words, petitioner contends that Congress having been delegated the power to regulate interstate commerce, may itself delegate to the commission the right to say whether or not that power shall be exercised, and this is plainly contrary to the common maxim *delegatus non potest delegare.*

But we shall certainly not attempt here to question any ruling made by this court. Our view of the Larrabee case and of its inapplicability here is best illustrated by four cases recently decided in the state courts.

The first of these, to which we invite the court's most careful attention, is the very recent decision of People v. Public Service Com. (Court of Appeal, New York), 233 N. Y. 113, 135 N. E. 195. It is stated in that opinion that in September, 1920, the Public Service Commission made an order requiring the N. Y. Central and the Lehigh to make such track connections between their lines in and near Batavia, N. Y., and lay such other tracks and facilities as "may be necessary to establish and furnish adequate and convenient interchange of freight; that the connection be made by repairing and completing the track now connected with the tracks of the Lehigh and extending to a point near the track of the N. Y. C., which track was formerly connected with the tracks of the N. Y. C."

In the second division of the opinion the court quotes the second paragraph of section 3 of the Interstate Commerce Act as amended by the Transportation Act of 1920, section 405, and says:

> "To sustain the order of the Public Service Commission in the instant case would necessarily establish that the two several

> commissions mentioned were clothed with jurisdiction to grant the relief sought and require us to ignore the well-established principle of law that the Congress, having delegated to the Interstate Commerce Commission power to deal with the subject matter of this proceeding, an exercise of like power by the state is thereby superseded." (Citing cases.)

Another case to which we may refer is, The People of the State of New York, *ex rel.*, the New York Central Railroad Company, v. Public Service Commission of the State of New York, 198 Appellate Division 436, 191 New York Supplement 636, which was affirmed in a memorandum opinion of the New York Court of Appeals, reported in 134 Northeastern 590, that court simply saying that the subject matter of the controversy had, by the Transportation Act of 1920, been relegated to the Interstate Commerce Commission. Thereafter, application was made to this court for a writ of certiorari, and that was denied without an opinion (257 U. S.——, 42 Sup. Ct. 314, 66 Law Edition——).

In Louisville and Nashville v. The State, 16 Ala. App. 199, 76 So. Rep. 505, the Supreme Court of that state reviewed the opinion by the Court of Appeals. That case involved what is known as the Railroad Headlight Law of Ala-

bama, which required a headlight of a certain candlepower to be used on every locomotive.

The Supreme Court of Alabama, page 514 of the Reporter, said:

> "When the mandatory act of Congress approved March 4, 1915, is read in connection with the Safe Locomotive Boilers Act of February 17, 1911, we cannot escape the conclusion that the intention of Congress is plain that the states must be excluded from the right to legislate within the field to which the several original acts and the mandatory act extended the federal authority. It is immaterial that the final rules on the subject of headlights to be used on locomotives were not promulgated by Interstate Commerce Commission until, respectively, June 6 and December 26, 1916, after the commission of the alleged offense for which the prosecution was had.
>
> "We are of the opinion that the act of the Alabama Legislature of July 17, 1915, is contrary to the express purpose and scope of the mandatory act of Congress of March 4, 1915, and that as to engines engaged in interstate commerce it has no application."

Another case closely analogous to the case at bar is that of State v. Atlantic C. L. R. R. Co., ... Fla. ..., 87 So. Rep. 773, decided February 15, 1921. This case involved a section of the Transportation Act of 1920, the same act which we are here invoking, but a section of the act which is not here involved, namely, the section

amending section 6, subdivision 13-A of the Interstate Commerce Act.

The court says:

> "Until Congress acted, there could be no question of the power of the state over the matter in controversy. But when Congress exercised the power and lodged jurisdiction over it in the Interstate Commerce Commission, it took it out of the jurisdiction of the state, and the right of the state over the same subject matter was extinguished."

The court further says at page 778:

> "In the case of Missouri P. R. Co. v. Larrabee etc., the court recognized and sanctioned this doctrine, but found that there had been no action by Congress or the Interstate Commerce Commission and that therefore a state court may by mandamus compel a railroad company doing interstate business to afford equal local shipping service to its shippers, notwithstanding the cars in regard to which the service is claimed are eventually to be engaged in interstate commerce. From this it seems that if Congress had expressly lodged in the Interstate Commerce Commission the power and duty with regard to switching service, as it has with regard to requiring physical connection between rail and water transportation, the court would have held that the state was without authority to regulate the subject."

It cannot be that a state commission may order joint use of terminals—terminals used in

interstate commerce—and thus forestall and prevent the exercise of this power vested in the Interstate Commerce Commission.

The Language Used in the Transportation Act of 1920 Is Clear. No Reference May Be Had to Views of Individual Members of Congress nor to Committee Reports Where the Effect Would Be Only to Create Doubts, Which Do Not Now Exist.

In attempting to construe the Transportation Act as not conferring upon the Interstate Commerce Commission jurisdiction with respect to joint terminals, the petitioners brief at page 30 descends to a quotation from the Congressional Record, giving excerpts from the debate on the bill in the House of Representatives. Upon this point this court has expressed itself repeatedly to the effect that in construing an Act of Congress a court is not at liberty to recur to the views of individual members in debate.

Aldridge v. Williams, 3 How. 9;
U. S. v. U. P. R. Co., 91 U. S. 72;
District v. Washington, 108 U. S. 243;
Dunlap v. U. S., 173 U. S. 65;
Maxwell v. Dow, 176 U. S. 581,

and numerous other cases.

In Railroad Commission v. C. B. & Q. Railroad Company, 257 U. S. 563, this court in construing this very Transportation Act of 1920, said at page 243:

> "Great stress is put on the legislative history of the Transportation Act to show that the bill was not intended to confer on the commission power to remove any discrimination against interstate commerce involved in a general disparity between interstate and intrastate rates. Committee reports and explanatory statements of members in charge made in presenting a bill for passage have been held to be a legitimate aid to the interpretation of a statute which in its language is doubtful or obscure. (Citing cases.) But when taking the act as a whole the effect of the language used is clear to the court, extraneous aid like this cannot control the interpretation. (Citing cases.) Such aids are only admissible to solve doubt and not to create it."

Conclusion.

It is therefore submitted that the petition should be denied. That this conclusion is correct is recognized by the city of Los Angeles, one of the parties to this proceeding before the Railroad Commission and in the Supreme Court of the state of California, since it has already filed its petition with the Interstate Commerce Commission seeking an order such as it origin-

ally desired from the Railroad Commission of the state of California.

Respectfully submitted,

C. W. DURBROW,
E. W. CAMP,
A. S. HALSTED,
CHAS. H. BATES,
Attorneys for Respondent.

W. F. HERRIN,
Of Counsel.

APR 11 1923
WM. R. STANSBURY
CLERK

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1922

No. 985 284

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,
Petitioner,

vs.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY (a corporation),
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA, BRIEF IN SUPPORT THEREOF and NOTICE OF DATE FOR SUBMISSION THEREOF.

HUGH GORDON,
WILLIAM W. CLARY,
Flood Building, San Francisco,
Attorneys for Petitioner.

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NOTE.

In order to present the matter covered by the following petition it has been necessary to file three petitions for writs of certiorari. The titles of these three petitions are:

(1) *Railroad Commission of the State of California, Petitioner, vs. Southern Pacific Company (a corporation), and Southern Pacific Railroad Company (a corporation), Respondent.*

(2) *Railroad Commission of the State of California, Petitioner, vs. Atchison, Topeka & Santa Fe Railway Company (a corporation), Respondent.*

(3) *Railroad Commission of the State of California, Petitioner, vs. Los Angeles & Salt Lake Railroad Company (a corporation), Respondent.*

These petitions and the briefs accompanying them are identical in subject matter and differ only in the titles of the proceedings. In all three of these cases the transcript of record is the same. One original of this transcript has been filed in each case and fifty copies have been filed in the case of Railroad Commission v. Southern Pacific Company, etc.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1922

No.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,
Petitioner,

vs.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY (a corporation),
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

Your petitioner, the Railroad Commission of California, is a commission created and established by the Constitution of that state and vested by said Constitution and by statutes with the power to regulate and control railroads and other public utilities

doing business therein. Said commission was a party to a proceeding before the Supreme Court of California entitled *The Atchison, Topeka & Santa Fe Railway Company, a Corporation v. Railroad Commission of the State of California, et al., etc.* A decision in this proceeding was rendered December 19, 1922, became final January 18, 1923, and is reported in 64 California Decisions 557.

In this case certain state statutes and the authority of the Railroad Commission under these statutes to make regulations relative to depot facilities of railroads were drawn in question on the ground of their being repugnant to the Act of Congress of 1920, amendatory to the Interstate Commerce Act, and the decision of the California Supreme Court was against their validity.

The decision of the State Supreme Court holds that certain powers formerly vested by state laws in the Railroad Commission have been terminated by said Act of Congress and vested in the Interstate Commerce Commission. In our opinion the construction given said Act of Congress by said decision is erroneous. We also believe that the question here at issue is of more than local importance in that it involves the duties and powers of the Interstate Commerce Commission and the powers of every state to regulate and control service and facilities of railroads.

SUMMARY OF MATTER INVOLVED.

Los Angeles is a city having a population of about 600,000 inhabitants. It is served by three steam railroads doing both intrastate and interstate business, i. e., the "Southern Pacific", the "Atchison, Topeka & Santa Fe" and the "Los Angeles and Salt Lake". Each of these companies has a separate line of railroad running into said city crossing numerous public streets at grade and each has a separate passenger depot. There is attached to this Petition a map showing the location of the railroad lines of the three railroad companies involved in these cases.

In 1916 seven complaints against the three last named companies were filed with the Railroad Commission. Three of these complaints were filed by different so-called Civic and Improvement Associations in Los Angeles and four by adjacent municipalities whose citizens travel back and forth to and from Los Angeles. A copy of one of these complaints will be found in the transcript, page 7. It is sufficient here to state that all these complaints alleged that there are a large number of dangerous grade crossings of each of the three steam railroad lines over public streets and street and interurban electric railways and two of the complaints alleged that the existing passenger depot of each of the three railroad companies is inadequate and inconveniently situated. The relief asked by the various complaints included a general investigation of the whole railroad and terminal situation, the

separation or abolition of dangerous grade crossings, and the construction and use jointly by the three railroad companies of a union passenger depot.

Later the Southern Pacific and Salt Lake companies filed a joint application with the commission asking permission to rearrange their tracks so as to abolish some of the important grade crossings and to use jointly the present Southern Pacific station as a common passenger depot. The Santa Fe Company was not included in this proposed arrangement.

The seven complaints and the application were consolidated for hearing before the Railroad Commission and one final order was made as to all. The engineering investigation and hearings in the consolidated matter, including a rehearing had before the commission, extended over a period of more than four years.

In the evidence submitted by various engineers were four plans for a union depot at the area specified, all of which contemplated a joint use by all of the defendants of certain existing terminal facilities owned by each of them to such extent as would enable the carriers to use the proposed union station in the most convenient manner. There was also an inspection of the premises by the commission.

The final order of the commission made no finding to the effect that a joint use of existing facilities was required and no such joint use was ordered.

The commission in its final order stated:

"It was urged by the carriers that the order requiring a union passenger depot at the plaza is without support in the evidence and that the Commission disregarded the evidence of carriers and relied exclusively upon the report of the Commission's own engineer. The Commission has given this claim careful consideration. Five detailed plans for a union terminal were introduced in evidence by five different witnesses. They were the Hawgood plan, the Barnard plan, the Storrow plan, the Southern Pacific-Salt Lake plan and the Sachse plan. With the exception of the Southern Pacific-Salt Lake plan, all of these plans called for a union passenger depot at the plaza, but differed as to the exact location of the depot and the arrangement of tracks, approaches, etc. In addition to these, the so-called Arnold report was introduced and there was much other evidence, all supporting the general proposition that a union depot at the plaza was necessary. The Commission did not rely solely on the report of its own engineer, nor did it adopt the Sachse plan in all its particulars, but, in accordance with the overwhelming preponderance of the evidence, the Commission did order a union depot at the general site of the plaza, and left the exact location of the depot, tracks, approaches, etc., to be determined by the carriers themselves, subject only to the final approval of the Commission."

The final order of the commission was made December 6, 1921. (Tr. pp. 131-152 inc.)

FINDINGS OF THE COMMISSION.

This order was based upon certain findings of fact which may be condensed and summarized as follows:

Certain grade crossings of the Southern Pacific, Santa Fe, and Salt Lake railroads are unsafe and public safety, convenience and necessity require their elimination.

The passenger stations of said railroad companies are inadequate to meet the public needs both in the matter of depot facilities and in connection with the elimination of grade crossings.

In order to eliminate the certain grade crossings enumerated *and* secure to the public the adequate and convenient union passenger terminal facilities which it requires, it is necessary that a union station be erected within an area specified.

COMMISSION'S ORDER.

The order itself was specific and required certain definite things to be done. Briefly these were:

The procurement jointly by the three carriers of grounds for a union depot within the area specified.

The filing of plans and specifications jointly by the three carriers for the construction of an adequate union passenger depot. (Provisions were made in the order as to apportionment of cost and time of construction.)

The actual construction of the depot in accordance with approved plans.

The elimination of 17 specified grade crossings on the Southern Pacific line by the cessation of train operations longitudinally at grade along and upon a certain street. (Alameda Street.)

The elimination of 6 specified grade crossings on the Santa Fe and Salt Lake lines by the construction of viaducts.

Each of the three carriers obtained from the Supreme Court of California a writ of review directed to the Railroad Commission to review the proceedings and order above described. The three proceedings raised almost identical questions and were treated by the State Supreme Court as one case. However, they were separate cases and for that reason it has been necessary to petition for three writs of *certiorari* here. The petitions are identical and the same transcript of record is used in all these cases.

GROUNDS OF STATE SUPREME COURT'S DECISION.

The Supreme Court of California ruled that the Railroad Commission might exercise jurisdiction over the matter of eliminating grade crossings, but that full power and authority over the matter of union terminal depot facilities has been vested in the Interstate Commerce Commission by the Act of 1920, amendatory to the Interstate Commerce Act.

The decision of the state Court consisted largely of a résumé of Sections 15a, Section 5, Section 1, subdivisions 18 to 22, inclusive, and Section 3 of the

Interstate Commerce Act as amended. The conclusion of the Court from this summary is completely expressed in the last paragraph of the decision which we quote:

> "(1) From the foregoing excerpts from the Act of Congress of 1920, amendatory of the Interstate Commerce law and from the authorities above cited, we arrive at the conclusion that full power and authority over the matter of union terminal depot facilities of the railroads who are largely engaged in interstate commerce, and who are the petitioners herein has been vested in the Interstate Commerce Commission under the terms of said Amendatory Act of 1920, and that by virtue thereof the Railroad Commission of California, one of the respondents herein, has been divested of the power, authority and jurisdiction over that subject, sought by it to be exercised in the several proceedings before it and by the order presented for review herein. This disposition of the primary inquiry involved in these proceedings renders unnecessary a discussion of the several subsidiary questions presented for our consideration by the briefs of counsel herein."

The Supreme Court of California is the Court of last resort in this state and there is no appeal from its decision except to this Court.

THE ISSUE.

The issue thus presented is one of jurisdiction.

Public necessity requires that a depot be built in Los Angeles. Who has jurisdiction to order the

railroads to furnish this facility, the state or the National government?

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

The authority of the Railroad Commission under state law to make regulations relative to union depots was drawn in question on the ground of its being repugnant to the Interstate Commerce Act, and the decision of the state Court was against its validity.

This decision was erroneous for the following reasons:

The California commission has authority under state law (Stat. 1915, Chap. 91, Sec. 36) to order the three carriers to erect a union depot. Prior to the enactment of the Transportation Act the carriers themselves admitted this to be so.

The Amendments of 1920 to the Interstate Commerce Act vest no jurisdiction in the Interstate Commission relative to the construction and use of new union depots.

The proviso at the end of paragraph 17, of Section 1 of the interstate act specifically reserves to the states the right to exercise its police powers "to require just and reasonable passenger service for intrastate business" except in so far as any state requirement may conflict with a lawful order of the Interstate Commission. (This proviso was not adverted to in the decision of the state Court.)

The Interstate Commission has made no order of any kind touching the matters here involved.

Wherefore your petitioner respectfully prays that a writ of *certiorari* may issue out of and under the seal of this Honorable Court directed to the Supreme Court of the State of California, commanding said Court to certify and send to this Honorable Court for its review and determination on a day certain to be therein designated, a full and complete transcript of the record in the proceeding in said Supreme Court of the State of California, entitled: *The Atchison, Topeka & Santa Fe Railway Company, a Corporation, Petitioner, v. Railroad Commission of the State of California, et al., Respondents*, L. A. No. 7166, pursuant to the Act of September 6, 1916, and that said judgment of said Supreme Court of the State of California may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and proper.

Dated, San Francisco,
March 21, 1923.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

HUGH GORDON,
WILLIAM W. CLARY,
Its Attorneys, San Francisco, California.

Appendix.

Extracts from Constitution of California:

Art. XII, Sec. 22. There is hereby created a Railroad Commission which shall consist of five members and which shall be known as the Railroad Commission of the State of California.

Art. XII, Sec. 23. Every private corporation, and every individual or association of individuals, owning, operating, managing, or controlling any commercial railroad, interurban railroad, street railroad, canal, pipe line, plant, or equipment, or any part of such railroad, canal, pipe line, plant, or equipment within this state, for the transportation or conveyance of passengers, or express matter, or freight of any kind, including crude oil, or for the transmission of telephone or telegraph messages, or for the production, generation, transmission, delivery or furnishing of heat, light, water or power or for the furnishing of storage or wharfage facilities, either directly or indirectly, to or for the public, and every common carrier, is hereby declared to be a public utility subject to such control and regulation by the Railroad Commission as may be provided by the legislature, and every class of private corporations, individuals, or association of individuals hereafter declared by the legislature to be public utilities shall likewise be subject to such control and regulation. The Railroad Commission shall have and exercise such power and jurisdiction to supervise and regulate public utilities, in the State of California, and to fix the rates to be charged for commodities furnished, or services rendered by public utilities as shall be conferred upon it by the legislature, and the right of the legislature to confer powers upon the Railroad Commission respecting pub-

lic utilities is hereby declared to be plenary and to be unlimited by any provision of this constitution.

Extracts from Public Utilities Act, Statutes 1915, p. 115:

Sec. 2. (*i*) The term "railroad," when used in this act, includes every commercial, interurban and other railway other than a street railroad, and each and every branch or extension thereof, by whatsoever power operated, together with all tracks, bridges, trestles, rights of way, subways, tunnels, stations, depots, union depots, ferries, yards, grounds, terminals, terminal facilities, structures and equipment, and all other real estate, fixtures and personal property of every kind used in connection therewith, owned, controlled, operated or managed for public use in the transportation of persons or property.

(*j*) The term "railroad corporation," when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any Court whatsoever, owning, controlling, operating or managing any railroad for compensation within this state.

(*l*) The term "common carrier," when used in this act, includes every railroad corporation; street railroad corporation; express corporation; dispatch, sleeping car, dining car, drawing room car, freight, freight-line, refrigerator, oil, stock, fruit, car loaning, car renting, car loading and every other car corporation or person, their lessees, trustees, receivers or trustees appointed by any Court whatsoever, operating for compensation within this state.

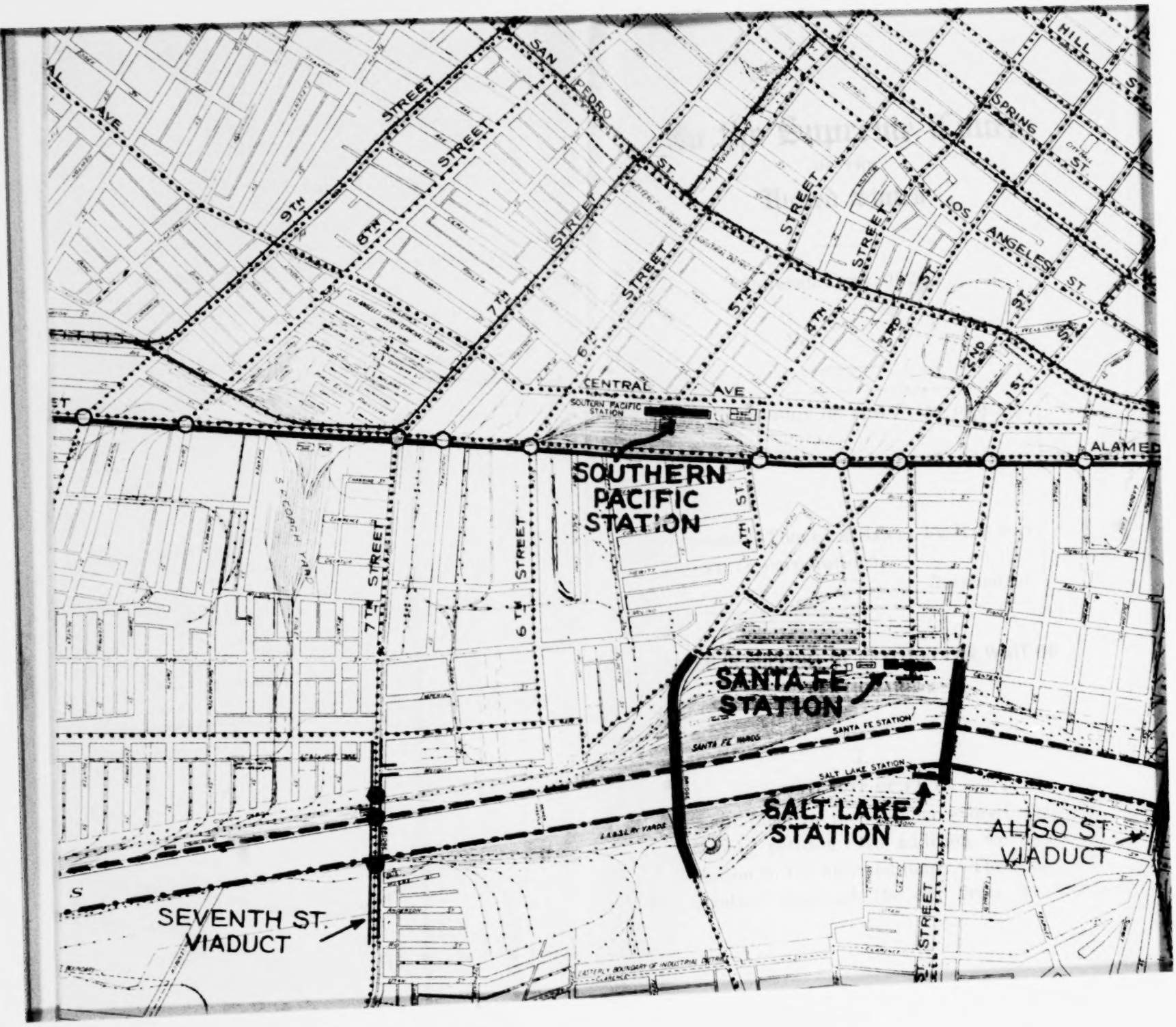
(*dd*) The term "public utility," when used in this act, includes every common carrier, pipe line corporation, gas corporation, electrical corporation, telephone corporation, telegraph cor-

poration, water corporation, wharfinger, warehouseman, and heat corporation, where the service is performed for or the commodity delivered to the public or any portion thereof.

SEC. 36. Whatever the commission, after a hearing had upon its own motion or upon complaint, shall find that additions, extensions, repairs, or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any two or more public utilities ought reasonably to be made, or that a new structure or structures should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the commission shall make and serve an order directing that such additions, extensions, repairs, improvements or changes be made or such structure or structures be erected in the manner and within the time specified in said order. If the commission orders the erection of a new structure, it may also fix the site thereof. If any additions, extensions, repairs, improvements or changes, or any new structure or structures which the commission has ordered to be erected, require joint action by two or more public utilities, the commission shall notify the said public utilities that such additions, extensions, repairs, improvements or changes or new structure or structures have been ordered and that the same shall be made at their joint cost, whereupon the said public utilities shall have such reasonable time as the commission may grant within which to agree upon the portion or division of cost of such additions, extensions, repairs, improvements or changes or new structure or structures, which each shall bear. If at the expiration of such time such public utilities shall fail to file with the commission a statement that an agreement has been made for a division or ap-

portionment of the cost or expense of such additions, extensions, repairs, improvements or changes, or new structure or structures, the commission shall have authority, after further hearing, to make an order fixing the proportion of such cost or expense to be borne by each public utility and the manner in which the same shall be paid or secured.

14TH
ALAMEDA
VERNON
LOS ANGELES
(SPUR)
9TH
SANTA FE AVE.
L O S A N G E L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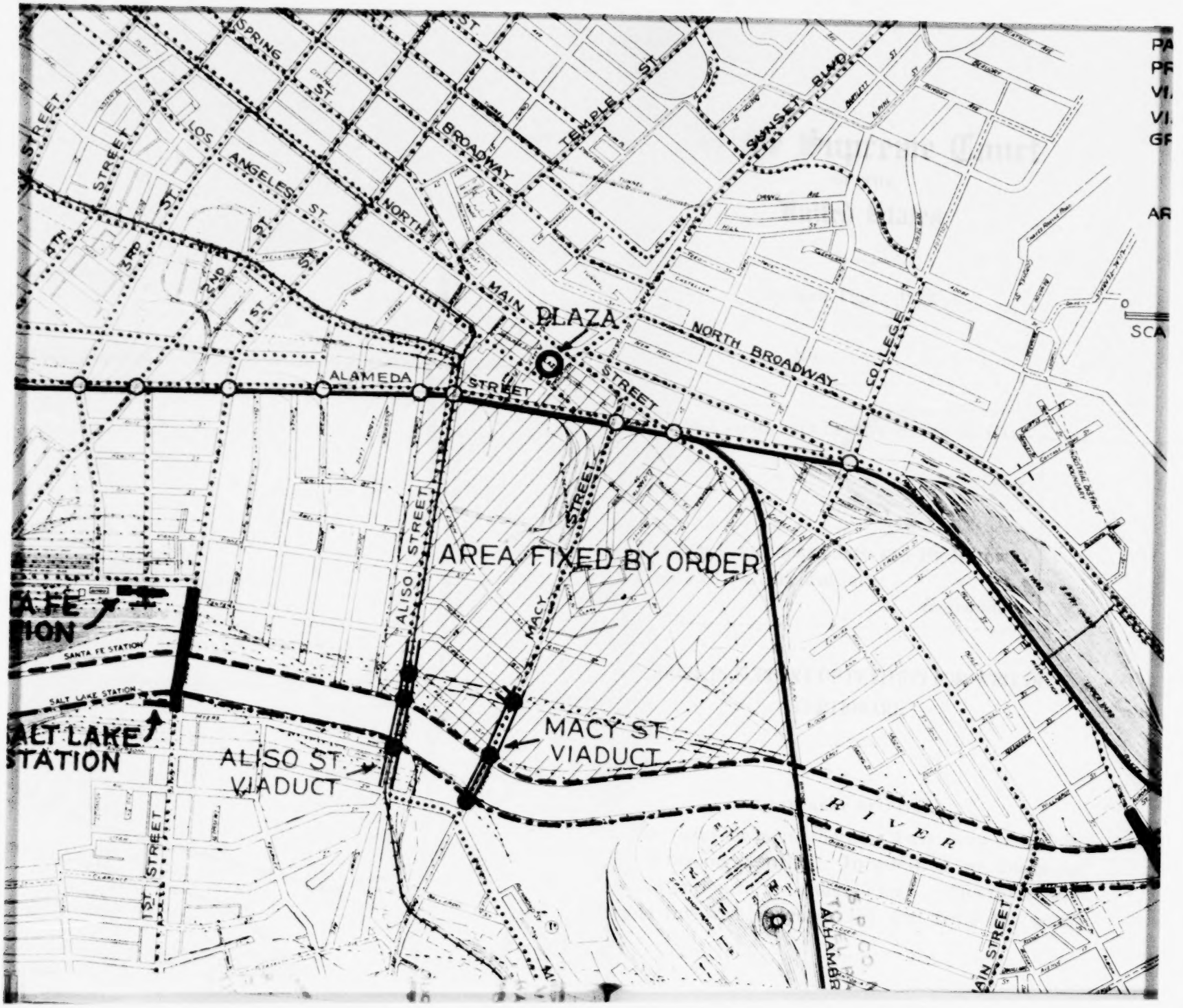
SANTA FE STATION
SALT LAKE STATION
ALISO ST. VIADUCT
SEVENTH ST. VIADUCT
CENTRAL AVE
SOUTHERN PACIFIC STATION
SANTA FE STATION
SANTA FE YARDS
SALT LAKE STATION
LASSEN YARDS
7TH STREET
6TH STREET
4TH ST.
SAN PEDRO ST.
SPRING ST.
HILL ST.
LOS ANGELES ST.
ALAMEDA
9TH STREET
8TH STREET
7TH STREET
6TH STREET
5TH STREET
4TH STREET
3RD ST.
2ND ST.
1ST ST.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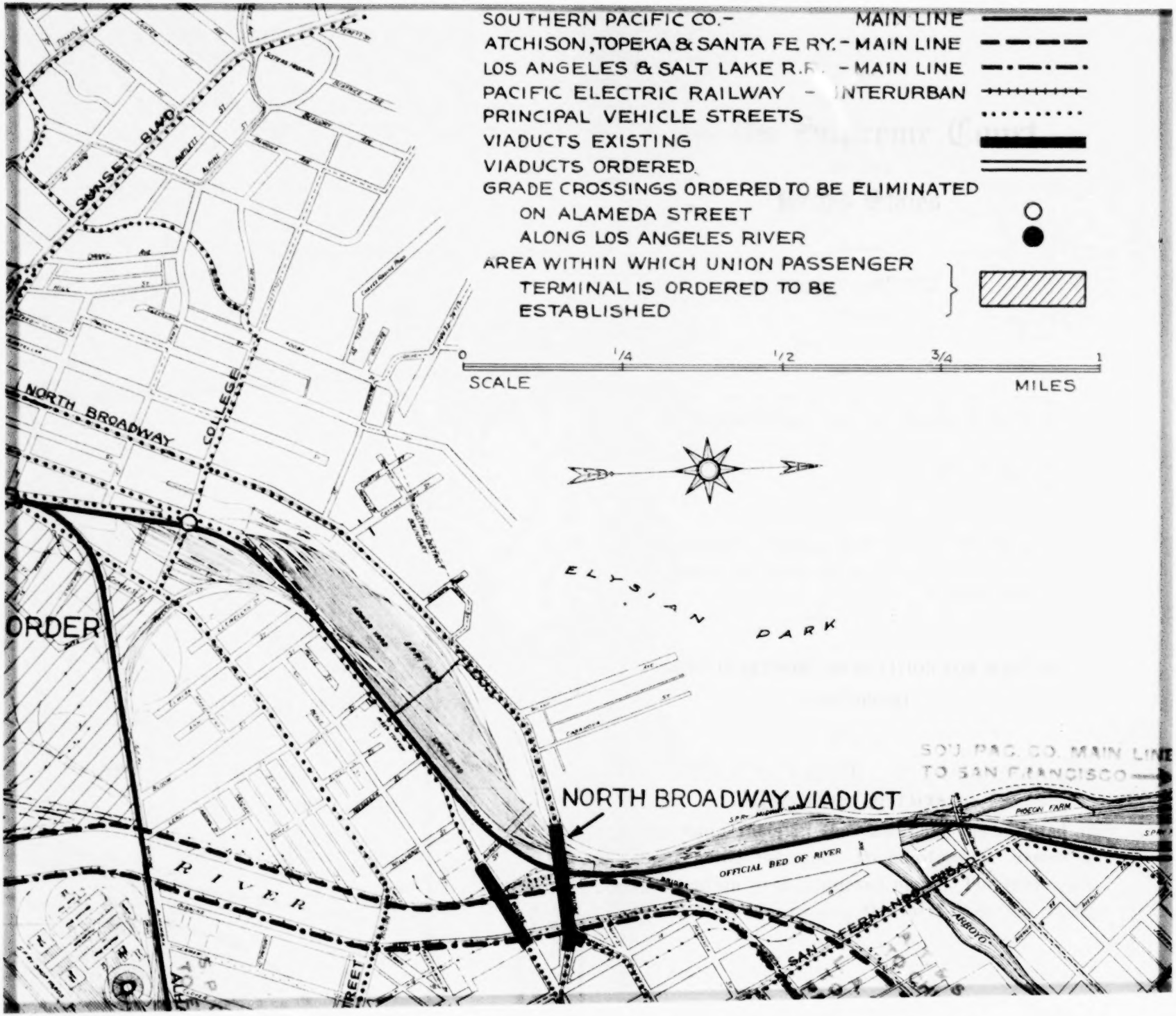
BROADWAY
TEMPLE ST.
SUNSET BLVD.
LOS ANGELES ST.
NORTH MAIN ST.
MAIN PLAZA
NORTH BROADWAY
COLLEGE
ALAMEDA STREET
ALISO STREET
MACY STREET
AREA FIXED BY ORDER
SANTA FE STATION
SALT LAKE STATION
ALISO ST. VIADUCT
MACY ST. VIADUCT
1ST STREET
RIVER
MAIN STREET


SOUTHERN PACIFIC CO.- MAIN LINE
ATCHISON, TOPEKA & SANTA FE RY. - MAIN LINE
LOS ANGELES & SALT LAKE R.R. - MAIN LINE
PACIFIC ELECTRIC RAILWAY - INTERURBAN
PRINCIPAL VEHICLE STREETS
VIADUCTS EXISTING
VIADUCTS ORDERED
GRADE CROSSINGS ORDERED TO BE ELIMINATED
ON ALAMEDA STREET
ALONG LOS ANGELES RIVER
AREA WITHIN WHICH UNION PASSENGER TERMINAL IS ORDERED TO BE ESTABLISHED
0 1/4 1/2 3/4 1
SCALE
MILES
SUNSET BLVD
NORTH BROADWAY
COLLEGE
ELYSIAN PARK
ORDER
NORTH BROADWAY VIADUCT
RIVER
OFFICIAL BED OF RIVER
SAN FERNANDO
ARROYO
POSEN FARM

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1922

No.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,
Petitioner,

vs.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY (a corporation),
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

STATEMENT OF FACTS.

The main facts in the case have been stated in the foregoing petition. In addition we desire to call attention to the annexed map. The three railroads involved approach the city from the north

and come together at a point marked "North Broadway Viaduct" near the top of the map. All three roads pass under this viaduct. From this point the "Salt Lake" and "Santa Fe" lines follow the bed of the Los Angeles River crossing important public highways at grade at Macy Street, Aliso Street and Seventh Street. The order of the commission requires these grade crossings to be eliminated by the construction of viaducts at the points marked on the map "Macy St. Viaduct", "Aliso St. Viaduct" and "Seventh St. Viaduct."

The Southern Pacific line from San Francisco does not follow the river bed but turns after passing under the North Broadway Viaduct and runs in a southwesterly direction till it reaches the north end of Alameda Street. From that point it runs directly south through the city on Alameda Street at grade all the way. The Southern Pacific line from El Paso comes into the city from the east on the avenue marked Alhambra Avenue. It joins the other line just north of "plaza". Alameda Street is a main highway or thorofare through the city and one of the most heavily traveled streets in the city. All the main line traffic of the Southern Pacific lines both from east and north run through Los Angeles at grade longitudinally upon and along this street the rails being flush with the pavement most of the way. Alameda Street is also crossed by 17 other public streets at grade. Some of these are very heavily traveled streets and several of

them carry street and electric interurban cars which cross the Southern Pacific tracks at grade. These crossings are marked by hollow red circles on the map. The commission ordered the Southern Pacific Company to eliminate these grade crossings by removing all traffic from Alameda Street except limited switching movements at night.

The district marked on the map with red diagonal lines and designated "area fixed by the order" is the district within which the carriers were ordered to construct a union depot. It is referred to in the record frequently as the "plaza site" the plaza being a small park in one corner of this area.

It will be seen that the Salt Lake and Santa Fe lines border this designated area and there would be no difficulty in constructing approaches to a union depot from the main lines of these roads. It will also be seen that the San Francisco and El Paso lines of the Southern Pacific pass directly thru this area so that a depot in this area would be easily approached by these lines. The Southern Pacific traffic from the south comes into the city at a point marked "To San Pedro and Santa Ana." But a small proportion of the total Southern Pacific traffic comes in from this direction. It is obvious from an inspection of the map that this southerly traffic can reach the proposed depot site in at least three different ways; by a new line which the Southern Pacific might construct along the river bed reaching the depot in the same way that the southerly lines of the Salt Lake and Santa Fe

reach it; by some arrangement with either the Salt Lake or Santa Fe for a joint use of tracks for southerly traffic; by an amendment to the commission's order permitting the southerly traffic to come into the depot upon the present tracks along Alameda Street.

The order of the commission did not designate any specific plan but required the carriers to prepare their own plans. This has not yet been done.

II.

SPECIFICATION OF ERRORS RELIED UPON.

The errors upon which petitioner relies for the issuance of the writ and for reversal of the judgment were outlined in the foregoing petition. For convenience we will briefly restate them.

The California commission has authority under state law (Section 36, Public Utilities Act, see appendix) to order the three railroad companies to erect a union depot.

The state Court erroneously construed the federal statute amendatory of the Interstate Commerce Act as having deprived the state of this jurisdiction and vested it in the Interstate Commerce Commission.

The state Court failed to give effect to the proviso of Section 1, paragraph 17 of the amended Interstate Commerce Act and to the principle an-

nounced in the case of *Missouri Pacific Railway Company v. Larrabee Flour Mill Company,* 211 U. S. 612.

The subject will be discussed under two heads:

1. The amendments of 1920 to the Interstate Commerce Act vest no power in the Interstate Commerce Commission relative to union passenger depots.

2. If the amendments of 1920 should be construed to cover the subject of union depots nevertheless the state's power remains unimpaired and the state commission's order is valid unless the interstate commission makes an inconsistent order.

III.

ARGUMENT.

1. The Amendments of 1920 to the Interstate Commerce Act vest no power in the Interstate Commerce Commission relative to union passenger depots.

The state Court based its decision that the interstate commission has exclusive jurisdiction over union depot facilities mainly upon Section 15a; Section 5, paragraphs 4 and 5; Section 1, paragraphs 3, 10, 1, 18, 21, 22; Section 3, paragraphs 3 and 4 and Section 1, paragraph 20, of the Amended Interstate Commerce Act. A brief reference to these provisions in the order discussed by the state Court is essential.

Section 15a. This section is referred to only as showing generally the greatly enlarged powers of the interstate commission and its affirmative duty to maintain an adequate railway service for the people of the United States.

Section 5. (Pars. 4 and 5.) These paragraphs relate to the general plan for the consolidation of railway properties of the United States into a limited number of systems. They are quoted in the decision as being expressive of the enlarged scope and purposes of the Act.

Section 1. (Pars. 3 and 10.) These provisions are referred to to show the definitions of the terms "railroad" and "car service."

None of the sections thus far mentioned make any reference to depots or terminal facilities.

Section 1. (Par. 1.) This section refers only to cases where the commission is of the opinion that an emergency exists. It gives the interstate commission powers when an emergency exists to (a) suspend established rules, (b) to make directions relative to car service, (c) to require joint use of terminals, including main line tracks for a reasonable distance outside of such terminals. This language does not authorize the interstate commission to require the erection of a new union depot for permanent use but refers to the joint use during emergencies of existing terminals. In the present case an emergency did not exist and the state

commission did not order the joint use of any existing terminal or any main line tracks.

Section 1. (Par. 18.) This provision refers to the construction, extension and abandonment of railroad lines and provides for the issuance of certificates of public convenience and necessity therefor. It was fully considered by this Court in *Texas v. Eastern Texas Ry. Co.*, U. S. Adv. Ops. 1921-22, p. 313. In the argument before the state Court and in the Court's decision, considerable importance was attached to this paragraph because the order of the state commission requires in connection with the elimination of grade crossings, the abandonment of certain traffic on Alameda Street within the City of Los Angeles. It was said that subdivision 18 of Section 1 deprived the state of the power to require the abandonment of any part of a line of railroad.

Reference to the actual order (Transcript, pp. 142-151 inc.) will show that the commission ordered neither the construction or abandonment of a "line of railroad." True, the erection of a new union depot and the elimination of grade crossings will require a rearrangement of traffic. Some new track may have to be laid and some old track abandoned. Reference to the map annexed to the petition will show that the amount of new track necessary to construct to enable the three roads to reach the area specified for the depot is very small. When it is all done there will be no change in the service

rendered to the public except that it will be improved.

The Interstate Commerce Commission has held that relocations of trackage of the kind here in question, where the changes have no effect on the service to the public, do not constitute either the construction or abandonment of "lines of railroad" within the meaning of par. 18, Sec. 1 of the Interstate Commerce Act.

> *In the matter of the Application of the Philadelphia, Newtown & New York Railroad for a certificate of public convenience and necessity, 67 I. C. C. Rep. 252, decided March 11, 1921.*
>
> *Application of the Pearl Valley Railroad Company, 67 I. C. C. Rep. 748, decided June 14, 1921.*

In the latter case 2.62 miles of main line track were abandoned but inasmuch as the service to the public was not affected no certificate was deemed necessary.

This construction is further borne out by the case of *Texas v. Eastern Texas Railroad Co.* (U. S. Adv. Op. 1921-22, 313). This Court in that case had before it paragraph 18, Section 1, of the Interstate Commerce Act. The question was, to what extent the interstate commission had jurisdiction under the amendments of 1920 over the abandonment of a railroad doing both interstate and intrastate commerce.

Referring to paragraph 18 and subsequent provisions, the Court said:

> "By them Congress has undertaken to regulate the construction and acquisition of new or additional lines of railroad and the extension and abandonment of old lines."

The "line of railroad" which the Court was discussing was a line 30 miles long. Its abandonment meant that a large territory and many people would cease to have any railroad service (by the road in question) at all.

The Supreme Court referred to the application as "an application for a certificate authorizing it to abandon and cease operating its road." This implies a complete cessation of service. Here, the carriers will not abandon or cease operating their roads or any part of them. They will merely shift their lines in such a way as to carry on the same operations they do now, but with more safety and convenience to the public.

Section 1. (Pars. 21 and 22.) Paragraph 21 authorizes the interstate commission to require any carrier to provide adequate facilities for performing "its car service as that term is defined in the Act" and to extend its line or lines. The term "car service" is defined in paragraph 10 of Section 1 and has to do with the supply, distribution and exchange of cars and locomotives. The clause as to extension of lines is similar to that found in paragraph 18 of Section 1, except that paragraph 18 applies to cases where permission to extend is

sought by the carrier and paragraph 21 applies to cases where the carrier is ordered to extend by the commission upon its own initiative or upon complaint. In neither case is a mere rearrangement of existing trackage an extension of a "line of railroad" within the meaning of these provisions. Paragraph 22 exempts from the authority of the commission, conferred by paragraphs 18 to 21 inclusive, all construction or abandonment of spurs, industrial tracks, etc., located wholly within one state.

Section 3. (Paragraphs 3 and 4.) Paragraph 3 refers to the interchange of traffic between different carriers. It was not claimed in any of the briefs before the state Court that the order of the state commission requires any interchange of traffic and in our opinion this paragraph has no bearing on the issue before the Court.

Paragraph 4 refers to existing terminal facilities. The paragraph reads as follows:

> "If the commission finds it to be in the public interest and to be practicable, without substantially impairing the ability of a carrier owning or entitled to the enjoyment of terminal facilities to handle its own business, it shall have power to require the use of any such terminal facilities, including main-line track or tracks for a reasonable distance outside of such terminal, of any carrier, by another carrier or other carriers, on such terms and for such compensation as the carriers affected may agree upon, or, in the event of a failure to agree on such terms as the commission may fix as just and reasonable for the use so required, to be

ascertained on the principle controlling compensation in condemnation proceedings. Such compensation shall be paid or adequately secured before the enjoyment of the use may be commenced. If under this paragraph the use of such terminal facilities of any carrier is required to be given to another carrier or other carriers, and the carrier whose terminal facilities are required to be so used is not satisfied with the terms fixed for such use, or if the amount of compensation so fixed is not duly and promptly paid, the carrier whose terminal facilities have thus been required to be given to another carrier or other carriers shall be entitled to recover, by suit or action against such other carrier or carriers, proper damages for any injuries sustained by it as the result of compliance with such requirement, or just compensation for such use, or both, as the case may be."

A comparison of this paragraph with Section 36 of the California Public Utilities Act will show that there is no conflict or inconsistency between them. Paragraph 4 refers to a "carrier owning or entitled to the enjoyment of terminal facilities." It provides for the use of the "terminal facilities including main line track for a reasonable distance outside such terminal" of one carrier by another carrier. It provides that "the carrier whose terminal facilities are required to be so used" may recover compensation. These expressions plainly mean existing terminal facilities. The order of the state commission requires the erection of a new union terminal at a new site, considerably removed from any of the existing depots. Obviously there

can be no joint use of the existing terminals of one carrier by another under this order. Instead, the matter falls within the terms of Section 36 of the California Act. In this statute there is specific provision for the erection of "a new structure or structures"; for "fixing the site thereof" and for "joint action" in erecting any "new structure."

It may be claimed that the state commission's order cannot be obeyed without a joint use of certain existing facilities such as main line tracks; and that the order is for that reason repugnant to the provisions of paragraph 4. This claim is based solely on the fact (set forth in the petition) that four plans for a depot at the site finally designated were proposed by witnesses and all these plans provided for some joint use of main line trackage. As stated in the decision of the commission (see Petition p. 5) and as is obvious from the commission's order the commission did not order the railroad companies to carry out any of these proposed plans. It simply ordered them to construct a depot somewhere within a large area according to plans which they themselves were to prepare. To say that no possible plan for a union depot can be devised which does not require a joint use of tracks is merely to speculate in advance of any attempt to prepare final plans. We may concede that the carriers would find it less expensive to comply with the order if they would arrange for some joint use of trackage. The witnesses who presented the plans referred to were

not considering the effect paragraph 4, Section 3 of the Interstate Commerce Act might have on the jurisdiction of the state commission if a joint use of tracks was had; they were merely considering the simplest way from an engineering standpoint of rearranging the tracks so as to bring the various lines to the proposed depot site and eliminate the grade crossings on Alameda Street. These plans were prepared and submitted at hearings held prior to the enactments of 1920. At that time the question of constructing a depot without joint use of tracks was not being considered. Subsequent to 1920 the commission inspected the premises and maps and made its order. An inspection of the map attached to the petition herein will show clearly that there is no obstacle to the construction of a union depot within the area designated without the joint use of existing tracks or other facilities. In view of the facts that no joint use of facilities was ordered by the commission; that no final plans have been prepared and that no attempt has been made to comply with the order, we submit that the objection that the order is repugnant to paragraph 4 of Section 3 because it will necessitate a joint use of tracks is wholly inconsistent and unfounded.

Section 1. (Paragraph 20). The last reference made by the state Court to the interstate act is to paragraph 20, Section 1. This paragraph prohibits the railroads from making any constructions or abandonments of lines of railroad without the

consent of the interstate commission. The prohibitions of the paragraph refer expressly to paragraphs 18 and 19 of Section 1. They do not refer to existing terminal facilities which are covered by Section 3, paragraph 4. The state Court erroneously construed paragraph 20 to apply to "the extension of railroad facilities and the abandonment of other railroad facilities, *including terminals.*" Upon this erroneous construction the Court based its conclusion that Congress has fully occupied the field of regulation "of the extension of terminal facilities."

The Court also erroneously construed the commission's order as requiring extensions and abandonment of lines of railroad. As already shown the order required no construction or extension of new lines or abandonment of old lines within the meaning of the act as construed by the interstate commission. Nor did the order require any joint use of facilities. The prohibitions of Section 20 therefore do not terminate the power of the state commission to make the order which it did make.

We have discussed all the sections of the interstate act relied upon by the Court and submit that not one of them vests in the interstate commission the power to order carriers to erect a new union depot or deprives the state of the power to do so. The fact that many kinds of regulations are specifically provided for in the act, as for instance interchange of traffic, switch connections, car service, securities, extensions into new territory, consolidation

of lines, etc., while the act is silent as to any regulation concerning new union depots indicates that the latter are not covered by the act. The familiar principle that the mention of specific matters excludes others is applicable here and excludes any possibility of the jurisdiction over new union depots being conferred on the interstate commission by the general provisions referred to in the above resume as being indicative of the scope of the act.

If, after plans are prepared for a union depot in compliance with the state commission's order, it should be deemed advisable to invoke the jurisdiction of the Interstate Commerce Commission in connection with any part of the work such as a joint use of tracks or for the issuance of securities, there is no reason why application therefor cannot be made to the interstate commission at that time. The present validity of the state commission's order is not affected by this possibility. Under well settled state law an order of the Railroad Commission is not invalid merely because the order cannot be carried out until some other public authority takes additional or concurrent action.

Motor Transit Company v. Railroad Commission, 64 Cal. Dec. 278, 209 Pac. 586;

Oro Electric Company v. Railroad Commission, 169 Cal. 466, 147 Pac. 118;

Turner Creamery Co. v. Chicago, Milwaukee & St. Paul R. R., 154 N. W. 819, P. U. R. 1916 A 1083.

It is our belief that the provisions of the Act above referred to are so clear that there can be no doubt as to their meaning. We are mindful of the rule that when the language of an act is clear to the Court, the legislative history of the act cannot control the interpretation. If, however, there should exist any doubt in the mind of the Court as to whether the sections above outlined deprive the state of its jurisdiction relative to union depots, we ask the Court's attention to the Congressional Record of November 15, 1919.

While the Esch-Cummins bill was being debated on the floor of the House of Representatives, Congressman McClintic of Oklahoma offered the following amendment (Congressional Record, November 15, 1919, p. 9067):

> "Provided, further, that the Commission is hereby given authority to require a carrier to maintain its present arrangement or to make new arrangements relative to the joint use of depots, upon such terms as shall be found by the Commission to be just and reasonable. No carrier shall be allowed to discontinue the use of a depot in connection with another carrier until proper application has been made to the Commission."

The purpose of this amendment, as explained by Congressman McClintic (pp. 9067, 9068), was to give the Interstate Commerce Commission jurisdiction over union passenger depots, largely for the purpose of preventing the railroad companies from tearing apart the unification of passenger depots so extensively established by the Government during

the federal operation of the railroads. Chairman Esch opposed the adoption of the amendment on the ground that jurisdiction over such matters had always been vested in the various states and should continue to be exercised by them. Chairman Esch said (Congressional Record, November 15, 1919, p. 9068):

> "Mr. Chairman, the matter which the gentleman from Oklahoma seeks to reach by his amendment lies almost wholly within the police power of the several states. There have been amendments offered to this bill seeking to preserve such police powers. The committee in framing the bill has sought not to encroach upon such powers. The matter of depots and joint use of depots is practically in the jurisdiction of the state commissions and all but one of the states have such commissions. In such small matters the detail should be left within the jurisdiction of the state authorities, who know the situation, know the conditions and know how best to meet the needs. There is, however, a provision in this bill providing for the joint use of terminals."

Mr. McClintic thereupon offered to withdraw the amendment, but another member insisted on having a vote thereon. Thereafter his amendment, which would have conferred upon the Interstate Commerce Commission jurisdiction over union passenger depots, was rejected (Congressional Record, November 15, 1919, p. 9071), thereby clearly indicating an intention that jurisdiction over union passenger depots should not be taken away from the states.

The above quotations refer only to the rejection of the amendment on the floor of Congress and to the

statement of the chairman of the committee having the bill in charge. It has been held that the courts may look to both these sources when in doubt as to the meaning of a statute.

United States v. Delaware & Hudson Co., 213 U. S. 366;

U. S. Printing Co. v. Deering, U. S. Adv. Op. 1920-21, pp. 176, 182.

2. If the Amendments of 1920 should be construed to cover the subject of union depots nevertheless the state's power remains unimpaired and the State Commission's Order is valid unless the Interstate Commission makes an inconsistent order.

In all its discussion of the amended Interstate Commerce Act the state Court made no mention of the proviso at the close of paragraph 17, Section 1. This proviso reads as follows:

> "Provided, however, that nothing in this act, shall impair or affect the right of a state, in the exercise of its police power, to require just and reasonable freight and passenger service for intrastate business, except in so far as such requirement is inconsistent with any lawful order of the commission made under the provisions of this act."

This proviso in plain terms preserves the police power of the state to require just and reasonable freight and passenger service for *intrastate* business. The fact that a carrier may also be engaged largely in interstate business does not deprive the state of this reserved power *unless* the state makes a requirement that is

"inconsistent with any lawful order of the commission (interstate) made under the provisions of this act."

The order made by the California commission was to require just and reasonable service of three railroads engaged largely in intrastate business. This order was certainly not inconsistent with any lawful order of the Interstate Commerce Commission for the obvious reason that the interstate body has made no order at all. Until it makes an order and unless the requirement of the state commission conflicts with that order, the state will retain full power to require just and reasonable passenger service of any railroad doing intrastate business regardless of the fact that such road also does interstate business.

The proviso in paragraph 17 is in effect a congressional enactment of the principle announced in *Missouri Pacific Ry. Co. v. Larrabee Flour Mill Co.*, 211 U. S. 612, viz., that even when Congress has entered a particular field of interstate commerce and has authorized the Interstate Commerce Commission to exercise jurisdiction therein, nevertheless unless the matter is one to be handled by general rule or regulation, the states may continue to act as to particular situations unless and until the interstate commission takes action as to such particular situations.

In the Larrabee case the state Court, by a writ of mandamus, ordered the Missouri Pacific Railroad Company to transfer and return cars loaded and unloaded from the line of the Santa Fe Railroad to

the mill and elevator of the Larrabee Flour Mills Company. The Missouri Pacific line was engaged in interstate commerce and about three-fifths of the flour of the mill company was shipped out of the state.

The contention was made that the Missouri Pacific and Santa Fe companies were common carriers engaged in interstate commerce, and, as such, were subject to the control of Congress, and therefore not amenable to the power of the state. At that time (1908), the Interstate Commerce Act was in force and the Interstate Commerce Commission had power to act in respect to the particular matters involved.

On principle, therefore, the situation was identical with that here under discussion. A requirement relative to service had been made by the state. The railroad involved was engaged largely in interstate commerce. In fact, the requirement made by the state acted directly upon interstate commerce. Congress had acted by creating the Interstate Commerce Commission and *resting it with full power to regulate the very matter which was at issue.*

This Court said:

> "On the other hand, it is said that Congress has already acted,—has created the Interstate Commerce Commission, and given to it a large measure of control over interstate commerce. But the fact that Congress has intrusted power to that commission does not, in the absence of action by it, change the rule which existed prior to the creation of the commission. Congress could always regulate interstate commerce, and could make specific provisions in reference

thereto, and yet this has not been held to interfere with the power of the state in these incidental matters. A mere delegation by Congress to the commission of a like power has no greater effect, and does not of itself disturb the authority of the state. It is not contended that the commission has taken any action in respect to the particular matters involved. It may never do so, and no one can, in advance, anticipate what it will do when it acts."

In the present instance the state Court, in its decision, said that this case of *Missouri v. Larrabee* is inapplicable because it was decided in 1909, several years prior to the attempt on the part of Congress to invest the Interstate Commerce Commission with jurisdiction over extensions or changes in interstate railroad lines.

The power of Congress to regulate interstate commerce, although supreme and exclusive, remains dormant until actually exercised. (Chief Justice Marshall in *Willson v. Black Bird Creek Marsh*, 2 Pet. 251; 7 L. ed. 414.) But the mere enactment of laws by Congress does not arouse this dormant power unless those laws are of such nature as to exclude any action by the states.

Cooley v. Port Wardens, 12 How. 316;

Sturges v. Crowinshield, 4 Wheat. 193;

Cleveland etc. v. Illinois, 177 U. S. 514; 44 L. ed. 868;

No. Pac. R. R. Co. v. Washington, 222 U. S. 370; 56 L. ed. 237;

Atl. Coast Line Ry. v. State of Georgia, 234 U. S. 280; 50 L. ed. 1312.

A law of Congress forbidding train crews to remain on duty more than 16 consecutive hours was a complete exercise of the dormant power to regulate that phase of the interstate commerce. Nothing remained to be done to make the law effective. It applied instantly to every train crew on every train engaged in interstate commerce regardless of the fact that such a crew might at the same time be engaged in intrastate commerce. No hearing by a commission or findings and orders were necessary. Nothing the state could do would add to or take away from the scope of the requirement. The hitherto dormant power of Congress was fully exercised, and this field of regulation fully occupied. (*No. Pac. R. R. Co. v. Washington*, 222 U. S. 370.)

Not so with depots. Before a depot can be required there must be an investigation of particular conditions and hearing, findings and a specific order must be made. Congress might conceivably do this itself. But if it delegates this power to a subordinate commission, still the power remains dormant until that subordinate commission exercises it.

In the *Larrabee* case Congress had delegated to the Interstate Commerce Commission powers of control over the particular matter in question. But that commission had not acted, and, as the Court said, it might never act, therefore, the federal power still remained dormant, and the state was free to make those regulations conducive to the welfare of its citizens. We submit that what the Court said in the *Larrabee* case applies as well to the delegations

of power made by Congress in the Act of 1920 as to those made by earlier enactments.

The case chiefly relied upon by the state Court is *People ex rel New York Central Railroad Company v. Public Service Commission,* 233 N. Y. 113. It was cited as a case approaching identity with the case at bar. In that case the state commission ordered two railroads to make track connections to permit interchange of freight.

We submit that the case is not in point because Section 3 of paragraph 3 of the Interstate Act as amended specifically provides for the interchange of traffic and the New York Court held that the New York law did not authorize the state commission to make such a requirement. Here the situation is exactly opposite. The interstate act does not provide for new union depots and the California law specifically does so.

For the reasons above set forth petitioner respectfully asks that the petition for a writ of *certiorari* be granted.

Dated, San Francisco,
March 21, 1923.

Respectfully submitted,

HUGH GORDON,
WILLIAM W. CLARY,
Attorneys for Petitioner.

NOTICE OF DATE FOR SUBMISSION.

To The Atchison, Topeka & Santa Fe Railroad Company, Respondent herein and to E. W. Camp and M. W. Reed, Esqs., Los Angeles, California, its Attorneys:

Please take notice that the foregoing petition for writ of certiorari will be presented to the Supreme Court of the United States on Monday, the 16th day of April, 1923.

Dated, San Francisco,
March 21, 1923.

HUGH GORDON,
WILLIAM W. CLARY,
Attorneys for Petitioner.

ADMISSION OF SERVICE.

Due service and receipt of a copy of the within petition for writ of certiorari to the Supreme Court of the State of California, brief in support thereof and notice of date for submission thereof is hereby admitted this 23rd day of March, 1923.

E. W. CAMP,
M. W. REED,
Attorneys for Respondent.

Copy

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CLERK

IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term, 1922.

No. ~~965~~ 84

Railroad Commission of the State of California,

Petitioner,

vs.

Atchison, Topeka & Santa Fe Railway Company (a Corporation),

Respondent.

RESPONDENT'S BRIEF

In Answer to Petition for Writ of Certiorari to the Supreme Court of the State of California and Brief in Support Thereof.

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NOTE.

The petitioner, Railroad Commission of the state of California, has filed three petitions for writs of certiorari to the Supreme Court of the state of California, entitled as follows:

(1) Railroad Commission of the state of California, petitioner, vs. Southern Pacific Company (a corporation), and Southern Pacific Railroad Company (a corporation), respondent.

(2) Railroad Commission of the state of California, petitioner, vs. Atchison, Topeka & Santa Fe Railway Company (a corporation), respondent.

(3) Railroad Commission of the state of California, petitioner, vs. Los Angeles & Salt Lake Railroad Company (a corporation), respondent.

These petitions and the briefs accompanying them are identical in subject matter and differ only in the titles of the proceedings. In all three of these cases the transcript of record is the same. An original of this brief is therefore filed in each of the three cases, together with the usual number of copies. These bear the titles, however, of the proceedings in which filed.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term, 1922.

No.....

Railroad Commission of the State of California,

Petitioner,

vs.

Atchison, Topeka & Santa Fe Railway Company (a Corporation),

Respondent.

RESPONDENT'S BRIEF

In Answer to Petition for Writ of Certiorari to the Supreme Court of the State of California and Brief in Support Thereof.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

While a respondent is not required by the statutes or rules of court to file a brief in answer to a petition for a writ of certiorari, the

instructions relative to applications for writs of certiorari, under the Acts of March 3rd, 1891, and September 6th, 1916, contemplate his doing if he so desires. In this case the respondent deems it desirable to do so, primarily for the purpose of pointing out just what facilities of the railroads will have to be abandoned if the order of the Railroad Commission of the state of California is carried out, and secondly, what extensions and joint trackage arrangements will have to be provided in order to comply with the terms of that order. Jurisdiction over these matters is expressly vested in the Interstate Commerce Commission under the Transportation Act, 1920, and for that reason alone the decision of the Supreme Court of the state of California is clearly right. These facts and conclusions may be amplified.

Abandonment of Existing Facilities.

Let us refer to the map attached to the petitoin. All trains of the Southern Pacific, upon its line to San Pedro and the Harbor District, and all of its trains to and from Santa Ana and its several branches in Orange county, now move along Alameda street. All passenger trains to and from San Francisco and other points to the north, and all passenger trains upon its main line to El Paso, move along Alameda street northerly of Fourth street. These "operations"

along Alameda street, a distance of approximately three miles, according to the terms of the order must be discontinued and abandoned, only local switching being permitted.

The passenger station of the Southern Pacific is located at the intersection of Fifth street and Central avenue. This is a modern structure, completed in 1915. While the order does not expressly provide for its abandonment its effect is precisely that, for if passenger trains cannot be run into and out of such a station it thereupon ceases to be a passenger station.

The Santa Fe and Salt Lake passenger stations are located respectively westerly and easterly of the Los Angeles River, near its intersection with First street. While it is conceivably possible that these two stations might still be used as such after completion of a union depot in the Plaza district, as contemplated by the Railroad Commission, the fact nevertheless remains that in practical effect the enforcement of the order will render these properties useless and will result in their abandonment.

Extensions and Joint Trackage Arrangements Necessary Under the Railroad Commission's Order.

Since all train movements except local switching are ordered discontinued along Alameda street, the Southern Pacific would have to seek a new route through the city, north to south.

What routes are open to it?

It might make use of the tracks of the Santa Fe along the westerly bank of the river—the Santa Fe's principal terminal facilities in the city—by the construction of connecting tracks between the two lines in the southerly portion of the city, and the construction of other connecting tracks in the north central portion of the city.

Or it might make use of the tracks of the Salt Lake along the easterly bank of the river —the latter's principal terminal facilities in the city—by the construction of similar connecting tracks. This would, however, occasion crossing and again recrossing the river.

Or it might build a new line of its own through the city, but this is entirely impracticable due to the enormous expense of constructing a line of such length through the heart of the industrial section of a large city.

The Salt Lake would have to build an extension or new line across the river to reach the area defined by the commission as the site for a union station.

The Southern Pacific main line to and from the east borders this site on the north as does the Santa Fe on the east, and it is conceivably possible to bring trains upon those lines into a depot located within the area mentioned, without serious operating difficulties. However, it

would be extremely difficult to handle Southern Pacific trains from and to the north, into and out of such a station without some switching back and forth, which is of course contrary to good operating methods. This objection might be obviated by the construction of other extensions of line, but this only emphasizes the fact that the order of the Railroad Commission does contemplate, actually and in practical effect, extensions of very considerable magnitude, together with joint use of certain main line tracks and terminal facilities now separately owned and operated.

The petitioner seeks to avoid the issue raised by this situation, by saying that the abandonment of facilities and the construction of extensions and the joint use of facilities are not contemplated by the express terms of the order as made, but the fact remains that such is the necessary effect of the order. The Railroad Commission has no power to do indirectly what it cannot do directly.

We shall not discuss in this brief constitutional questions respecting an order of any commission directing a public utility to expend large sums in acquiring new property and devoting it to a public use.

Corrections in Petitioner's Statement of Facts.

On pages 15 and 16 of petitioner's brief it is stated:

"The three railroads involved approach the city from the north and come together at a point marked 'North Broadway Viaduct' near the top of the map. All three roads pass under this viaduct."

While literally true, the statement gives a somewhat false conception of the true situation. The Southern Pacific trains to the north pass this point, as do those of the Santa Fe via Pasadena. The Salt Lake has but a branch to Pasadena and that is the line referred to. All of the Santa Fe trains on its main line to the east through Fullerton, and to San Diego, move through the southerly portion of the city, as do those of the Southern Pacific on its Santa Ana and San Pedro branches. All of the main line trains of the Salt Lake and its San Pedro branch line trains enter and leave through the southerly portion of the city. The main line of the Southern Pacific to the east does not pass near the North Broadway viaduct.

On page 17 of petitioner's brief it is stated that the Salt Lake line borders the area prescribed by the Railroad Commission. This is not the fact, for it will require the construction of an extension of the Salt Lake line crossing the river, to reach the area mentioned.

The Transportation Act of 1920 Vests in the Interstate Commerce Commission Sole Power and Authority to Order or Permit Joint Use of Railroad Facilities. That Field Is Thereby Completely Occupied, to the Exclusion of any Right of State Commissions to Act in the Premises.

In the decision of the Supreme Court of California, of which petitioner seeks a review, is a clear exposition of the new policy of the federal law with reference to the railroads. And in the recent cases of Akron, Canton & Youngstown Railway Company *et al.*, v. The United States *et al.*, (The New England Divisions' case), decided by this court on February 19th, last, and in Railroad Commission of Wisconsin v. Chicago, Burlington & Quincy R. R. Company, 257 U. S. 563, this court has in no uncertain language recognized and given effect to the greatly broadened powers of the Interstate Commerce Commission, under the Transportation Act, 1920.

The Supreme Court of the state of California has recognized in the instant case that the order of the Railroad Commission, requiring as it did the construction and extension of lines of railroad, the abandonment of operations upon a very important section of main line of one of the railroads, and the joint use of terminal fa-

cilities and the construction of certain extensions, infringed upon these newly granted powers of the Interstate Commerce Commission.

As to joint use of terminal facilities: Petitioner's brief says, page 26, that the order does not require any joint use of facilities; but this seems to be intended to apply to present or existing facilities and to admit that there is to be and must be a joint use of the new station and the facilities appurtenant thereto.

It is clear that under the provisions of paragraphs 3 and 4 of section 3 of the Interstate Commerce Act the power to order such joint use of a terminal is now vested in the Interstate Commerce Commission. In answer to this, the petitioner cites the case of Missouri etc. v. Larrabee etc., 211 U. S. 612, 53 L. Ed. 352, in support of the proposition that although the act may have vested such power in the Interstate Commerce Commission, yet until that commission asserts and exercises the power the state's authority abides the same as if Congress had not acted at all. In other words, petitioner contends that Congress having been delegated the power to regulate interstate commerce, may itself delegate to the commission the right to say whether or not that power shall be exercised, and this is plainly contrary to the common maxim *delegatus non potest delegare*.

But we shall certainly not attempt here to question any ruling made by this court. Our view of the Larrabee case and of its inapplicability here is best illustrated by four cases recently decided in the state courts.

The first of these, to which we invite the court's most careful attention, is the very recent decision of People v. Public Service Com. (Court of Appeal, New York), 233 N. Y. 113, 135 N. E. 195. It is stated in that opinion that in September, 1920, the Public Service Commission made an order requiring the N. Y. Central and the Lehigh to make such track connections between their lines in and near Batavia, N. Y., and lay such other tracks and facilities as "may be necessary to establish and furnish adequate and convenient interchange of freight; that the connection be made by repairing and completing the track now connected with the tracks of the Lehigh and extending to a point near the track of the N. Y. C., which track was formerly connected with the tracks of the N. Y. C."

In the second division of the opinion the court quotes the second paragraph of section 3 of the Interstate Commerce Act as amended by the Transportation Act of 1920, section 405, and says:

> "To sustain the order of the Public Service Commission in the instant case would necessarily establish that the two several

> commissions mentioned were clothed with jurisdiction to grant the relief sought and require us to ignore the well-established principle of law that the Congress, having delegated to the Interstate Commerce Commission power to deal with the subject matter of this proceeding, an exercise of like power by the state is thereby superseded." (Citing cases.)

Another case to which we may refer is, The People of the State of New York, *ex rel.*, the New York Central Railroad Company, v. Public Service Commission of the State of New York, 198 Appellate Division 436, 191 New York Supplement 636, which was affirmed in a memorandum opinion of the New York Court of Appeals, reported in 134 Northeastern 590, that court simply saying that the subject matter of the controversy had, by the Transportation Act of 1920, been relegated to the Interstate Commerce Commission. Thereafter, application was made to this court for a writ of certiorari, and that was denied without an opinion (257 U. S.——, 42 Sup. Ct. 314, 66 Law Edition——).

In Louisville and Nashville v. The State, 16 Ala. App. 199, 76 So. Rep. 505, the Supreme Court of that state reviewed the opinion by the Court of Appeals. That case involved what is known as the Railroad Headlight Law of Ala-

bama, which required a headlight of a certain candlepower to be used on every locomotive.

The Supreme Court of Alabama, page 514 of the Reporter, said:

> "When the mandatory act of Congress approved March 4, 1915, is read in connection with the Safe Locomotive Boilers Act of February 17, 1911, we cannot escape the conclusion that the intention of Congress is plain that the states must be excluded from the right to legislate within the field to which the several original acts and the mandatory act extended the federal authority. It is immaterial that the final rules on the subject of headlights to be used on such locomotives were not promulgated by the Interstate Commerce Commission until, respectively, June 6 and December 26, 1916, after the commission of the alleged offense for which the prosecution was had.
>
> "We are of the opinion that the act of the Alabama Legislature of July 17, 1915, is contrary to the express purpose and scope of the mandatory act of Congress of March 4, 1915, and that as to engines engaged in interstate commerce it has no application."

Another case closely analogous to the case at bar is that of State v. Atlantic C. L. R. R. Co., ... Fla. ..., 87 So. Rep. 773, decided February 15, 1921. This case involved a section of the Transportation Act of 1920, the same act which we are here invoking, but a section of the act which is not here involved, namely, the section

amending section 6, subdivision 13-A of the Interstate Commerce Act.

The court says:

> "Until Congress acted, there could be no question of the power of the state over the matter in controversy. But when Congress exercised the power and lodged jurisdiction over it in the Interstate Commerce Commission, it took it out of the jurisdiction of the state, and the right of the state over the same subject matter was extinguished."

The court further says at page 778:

> "In the case of Missouri P. R. Co. v. Larrabee etc., the court recognized and sanctioned this doctrine, but found that there had been no action by Congress or the Interstate Commerce Commission and that therefore a state court may by mandamus compel a railroad company doing interstate business to afford equal local shipping service to its shippers, notwithstanding the cars in regard to which the service is claimed are eventually to be engaged in interstate commerce. From this it seems that if Congress had expressly lodged in the Interstate Commerce Commission the power and duty with regard to switching service, as it has with regard to requiring physical connection between rail and water transportation, the court would have held that the state was without authority to regulate the subject."

It cannot be that a state commission may order joint use of terminals—terminals used in

interstate commerce—and thus forestall and prevent the exercise of this power vested in the Interstate Commerce Commission.

The Language Used in the Transportation Act of 1920 Is Clear. No Reference May Be Had to Views of Individual Members of Congress nor to Committee Reports Where the Effect Would Be Only to Create Doubts, Which Do Not Now Exist.

In attempting to construe the Transportation Act as not conferring upon the Interstate Commerce Commission jurisdiction with respect to joint terminals, the petitioners brief at page 30 descends to a quotation from the Congressional Record, giving excerpts from the debate on the bill in the House of Representatives. Upon this point this court has expressed itself repeatedly to the effect that in construing an Act of Congress a court is not at liberty to recur to the views of individual members in debate.

Aldridge v. Williams, 3 How. 9;
U. S. v. U. P. R. Co., 91 U. S. 72;
District v. Washington, 108 U. S. 243;
Dunlap v. U. S., 173 U. S. 65;
Maxwell v. Dow, 176 U. S. 581,

and numerous other cases.

In Railroad Commission v. C. B. & Q. Railroad Company, 257 U. S. 563, this court in construing this very Transportation Act of 1920, said at page 243:

> "Great stress is put on the legislative history of the Transportation Act to show that the bill was not intended to confer on the commission power to remove any discrimination against interstate commerce involved in a general disparity between interstate and intrastate rates. Committee reports and explanatory statements of members in charge made in presenting a bill for passage have been held to be a legitimate aid to the interpretation of a statute which in its language is doubtful or obscure. (Citing cases.) But when taking the act as a whole the effect of the language used is clear to the court, extraneous aid like this cannot control the interpretation. (Citing cases.) Such aids are only admissible to solve doubt and not to create it."

Conclusion.

It is therefore submitted that the petition should be denied. That this conclusion is correct is recognized by the city of Los Angeles, one of the parties to this proceeding before the Railroad Commission and in the Supreme Court of the state of California, since it has already filed its petition with the Interstate Commerce Commission seeking an order such as it origin-

ally desired from the Railroad Commission of the state of California.

Respectfully submitted,

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APR 11 1923
WM. R. STANSBURY
CLERK

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1922

No. 286

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,
Petitioner,

vs.

LOS ANGELES & SALT LAKE RAILROAD COMPANY (a corporation),
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA, BRIEF IN SUPPORT THEREOF and NOTICE OF DATE FOR SUBMISSION THEREOF.

HUGH GORDON,
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NOTE.

In order to present the matter covered by the following petition it has been necessary to file three petitions for writs of certiorari. The titles of these three petitions are:

(1) *Railroad Commission of the State of California, Petitioner, vs. Southern Pacific Company (a corporation), and Southern Pacific Railroad Company (a corporation), Respondent.*

(2) *Railroad Commission of the State of California, Petitioner, vs. Atchison, Topeka & Santa Fe Railway Company (a corporation), Respondent.*

(3) *Railroad Commission of the State of California, Petitioner, vs. Los Angeles & Salt Lake Railroad Company (a corporation), Respondent.*

These petitions and the briefs accompanying them are identical in subject matter and differ only in the titles of the proceedings. In all three of these cases the transcript of record is the same. One original of this transcript has been filed in each case and fifty copies have been filed in the case of Railroad Commission v. Southern Pacific Company, etc.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1922

No.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,

Petitioner,

vs.

LOS ANGELES & SALT LAKE RAILROAD COMPANY (a corporation),

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

Your petitioner, the Railroad Commission of California, is a commission created and established by the Constitution of that state and vested by said Constitution and by statutes with the power to regulate and control railroads and other public utilities

doing business therein. Said commission was a party to a proceeding before the Supreme Court of California entitled *Los Angeles & Salt Lake Railroad Company, a Corporation vs. Railroad Commission of the State of California, et al., etc.* A decision in this proceeding was rendered December 19, 1922, became final January 18, 1923, and is reported in 64 California Decisions 557.

In this case certain state statutes and the authority of the Railroad Commission under these statutes to make regulations relative to depot facilities of railroads were drawn in question on the ground of their being repugnant to the Act of Congress of 1920, amendatory to the Interstate Commerce Act, and the decision of the California Supreme Court was against their validity.

The decision of the State Supreme Court holds that certain powers formerly vested by state laws in the Railroad Commission have been terminated by said Act of Congress and vested in the Interstate Commerce Commission. In our opinion the construction given said Act of Congress by said decision is erroneous. We also believe that the question here at issue is of more than local importance in that it involves the duties and powers of the Interstate Commerce Commission and the powers of every state to regulate and control service and facilities of railroads.

SUMMARY OF MATTER INVOLVED.

Los Angeles is a city having a population of about 600,000 inhabitants. It is served by three steam railroads doing both intrastate and interstate business, i. e., the "Southern Pacific", the "Atchison, Topeka & Santa Fe" and the "Los Angeles and Salt Lake". Each of these companies has a separate line of railroad running into said city crossing numerous public streets at grade and each has a separate passenger depot. There is attached to this Petition a map showing the location of the railroad lines of the three railroad companies involved in these cases.

In 1916 seven complaints against the three last named companies were filed with the Railroad Commission. Three of these complaints were filed by different so-called Civic and Improvement Associations in Los Angeles and four by adjacent municipalities whose citizens travel back and forth to and from Los Angeles. A copy of one of these complaints will be found in the transcript, page 7. It is sufficient here to state that all these complaints alleged that there are a large number of dangerous grade crossings of each of the three steam railroad lines over public streets and street and interurban electric railways and two of the complaints alleged that the existing passenger depot of each of the three railroad companies is inadequate and inconveniently situated. The relief asked by the various complaints included a general investigation of the whole railroad and terminal situation, the

separation or abolition of dangerous grade crossings, and the construction and use jointly by the three railroad companies of a union passenger depot.

Later the Southern Pacific and Salt Lake companies filed a joint application with the commission asking permission to rearrange their tracks so as to abolish some of the important grade crossings and to use jointly the present Southern Pacific station as a common passenger depot. The Santa Fe Company was not included in this proposed arrangement.

The seven complaints and the application were consolidated for hearing before the Railroad Commission and one final order was made as to all. The engineering investigation and hearings in the consolidated matter, including a rehearing had before the commission, extended over a period of more than four years.

In the evidence submitted by various engineers were four plans for a union depot at the area specified, all of which contemplated a joint use by all of the defendants of certain existing terminal facilities owned by each of them to such extent as would enable the carriers to use the proposed union station in the most convenient manner. There was also an inspection of the premises by the commission.

The final order of the commission made no finding to the effect that a joint use of existing facilities was required and no such joint use was ordered.

The commission in its final order stated:

> "It was urged by the carriers that the order requiring a union passenger depot at the plaza is without support in the evidence and that the Commission disregarded the evidence of carriers and relied exclusively upon the report of the Commission's own engineer. The Commission has given this claim careful consideration. Five detailed plans for a union terminal were introduced in evidence by five different witnesses. They were the Hawgood plan, the Barnard plan, the Storrow plan, the Southern Pacific-Salt Lake plan and the Sachse plan. With the exception of the Southern Pacific-Salt Lake plan, all of these plans called for a union passenger depot at the plaza, but differed as to the exact location of the depot and the arrangement of tracks, approaches, etc. In addition to these, the so-called Arnold report was introduced and there was much other evidence, all supporting the general proposition that a union depot at the plaza was necessary. The Commission did not rely solely on the report of its own engineer, nor did it adopt the Sachse plan in all its particulars, but, in accordance with the overwhelming preponderance of the evidence, the Commission did order a union depot at the general site of the plaza, and left the exact location of the depot, tracks, approaches, etc., to be determined by the carriers themselves, subject only to the final approval of the Commission."

The final order of the commission was made December 6, 1921. (Tr. pp. 131-152 inc.)

FINDINGS OF THE COMMISSION.

This order was based upon certain findings of fact which may be condensed and summarized as follows:

Certain grade crossings of the Southern Pacific, Santa Fe, and Salt Lake railroads are unsafe and public safety, convenience and necessity require their elimination.

The passenger stations of said railroad companies are inadequate to meet the public needs both in the matter of depot facilities and in connection with the elimination of grade crossings.

In order to eliminate the certain grade crossings enumerated *and* secure to the public the adequate and convenient union passenger terminal facilities which it requires, it is necessary that a union station be erected within an area specified.

COMMISSION'S ORDER.

The order itself was specific and required certain definite things to be done. Briefly these were:

The procurement jointly by the three carriers of grounds for a union depot within the area specified.

The filing of plans and specifications jointly by the three carriers for the construction of an adequate union passenger depot. (Provisions were made in the order as to apportionment of cost and time of construction.)

The actual construction of the depot in accordance with approved plans.

The elimination of 17 specified grade crossings on the Southern Pacific line by the cessation of train operations longitudinally at grade along and upon a certain street. (Alameda Street.)

The elimination of 6 specified grade crossings on the Santa Fe and Salt Lake lines by the construction of viaducts.

Each of the three carriers obtained from the Supreme Court of California a writ of review directed to the Railroad Commission to review the proceedings and order above described. The three proceedings raised almost identical questions and were treated by the State Supreme Court as one case. However, they were separate cases and for that reason it has been necessary to petition for three writs of *certiorari* here. The petitions are identical and the same transcript of record is used in all these cases.

GROUNDS OF STATE SUPREME COURT'S DECISION.

The Supreme Court of California ruled that the Railroad Commission might exercise jurisdiction over the matter of eliminating grade crossings, but that full power and authority over the matter of union terminal depot facilities has been vested in the Interstate Commerce Commission by the Act of 1920, amendatory to the Interstate Commerce Act.

The decision of the state Court consisted largely of a résumé of Sections 15a, Section 5, Section 1, subdivisions 18 to 22, inclusive, and Section 3 of the

Interstate Commerce Act as amended. The conclusion of the Court from this summary is completely expressed in the last paragraph of the decision which we quote:

> "(1) From the foregoing excerpts from the Act of Congress of 1920, amendatory of the Interstate Commerce law and from the authorities above cited, we arrive at the conclusion that full power and authority over the matter of union terminal depot facilities of the railroads who are largely engaged in interstate commerce, and who are the petitioners herein has been vested in the Interstate Commerce Commission under the terms of said Amendatory Act of 1920, and that by virtue thereof the Railroad Commission of California, one of the respondents herein, has been divested of the power, authority and jurisdiction over that subject, sought by it to be exercised in the several proceedings before it and by the order presented for review herein. This disposition of the primary inquiry involved in these proceedings renders unnecessary a discussion of the several subsidiary questions presented for our consideration by the briefs of counsel herein."

The Supreme Court of California is the Court of last resort in this state and there is no appeal from its decision except to this Court.

THE ISSUE.

The issue thus presented is one of jurisdiction.

Public necessity requires that a depot be built in Los Angeles. Who has jurisdiction to order the

railroads to furnish this facility, the state or the National government?

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

The authority of the Railroad Commission under state law to make regulations relative to union depots was drawn in question on the ground of its being repugnant to the Interstate Commerce Act, and the decision of the state Court was against its validity.

This decision was erroneous for the following reasons:

The California commission has authority under state law (Stat. 1915, Chap. 91, Sec. 36) to order the three carriers to erect a union depot. Prior to the enactment of the Transportation Act the carriers themselves admitted this to be so.

The Amendments of 1920 to the Interstate Commerce Act vest no jurisdiction in the Interstate Commission relative to the construction and use of new union depots.

The proviso at the end of paragraph 17, of Section 1 of the interstate act specifically reserves to the states the right to exercise its police powers "to require just and reasonable passenger service for intrastate business" except in so far as any state requirement may conflict with a lawful order of the Interstate Commission. (This proviso was not adverted to in the decision of the state Court.)

The Interstate Commission has made no order of any kind touching the matters here involved.

Wherefore your petitioner respectfully prays that a writ of *certiorari* may issue out of and under the seal of this Honorable Court directed to the Supreme Court of the State of California, commanding said Court to certify and send to this Honorable Court for its review and determination on a day certain to be therein designated, a full and complete transcript of the record in the proceeding in said Supreme Court of the State of California, entitled: *Los Angeles & Salt Lake Railroad Company, a Corporation, Petitioner, vs. Railroad Commission of the State of California, et al., Respondents*, L. A. No. 7165, pursuant to the Act of September 6, 1916, and that said judgment of said Supreme Court of the State of California may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and proper.

Dated, San Francisco,
March 21, 1923.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

HUGH GORDON,
WILLIAM W. CLARY,
Its Attorneys, San Francisco, California.

Appendix.

Extracts from Constitution of California:

Art. XII, Sec. 22. There is hereby created a Railroad Commission which shall consist of five members and which shall be known as the Railroad Commission of the State of California.

Art. XII, Sec. 23. Every private corporation, and every individual or association of individuals, owning, operating, managing, or controlling any commercial railroad, interurban railroad, street railroad, canal, pipe line, plant, or equipment, or any part of such railroad, canal, pipe line, plant, or equipment within this state, for the transportation or conveyance of passengers, or express matter, or freight of any kind, including crude oil, or for the transmission of telephone or telegraph messages, or for the production, generation, transmission, delivery or furnishing of heat, light, water or power or for the furnishing of storage or wharfage facilities, either directly or indirectly, to or for the public, and every common carrier, is hereby declared to be a public utility subject to such control and regulation by the Railroad Commission as may be provided by the legislature, and every class of private corporations, individuals, or association of individuals hereafter declared by the legislature to be public utilities shall likewise be subject to such control and regulation. The Railroad Commission shall have and exercise such power and jurisdiction to supervise and regulate public utilities, in the State of California, and to fix the rates to be charged for commodities furnished, or services rendered by public utilities as shall be conferred upon it by the legislature, and the right of the legislature to confer powers upon the Railroad Commission respecting pub-

lic utilities is hereby declared to be plenary and to be unlimited by any provision of this constitution.

Extracts from Public Utilities Act, Statutes 1915, p. 115:

Sec. 2. (*i*) The term "railroad," when used in this act, includes every commercial, interurban and other railway other than a street railroad, and each and every branch or extension thereof, by whatsoever power operated, together with all tracks, bridges, trestles, rights of way, subways, tunnels, stations, depots, union depots, ferries, yards, grounds, terminals, terminal facilities, structures and equipment, and all other real estate, fixtures and personal property of every kind used in connection therewith, owned, controlled, operated or managed for public use in the transportation of persons or property.

(*j*) The term "railroad corporation," when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any Court whatsoever, owning, controlling, operating or managing any railroad for compensation within this state.

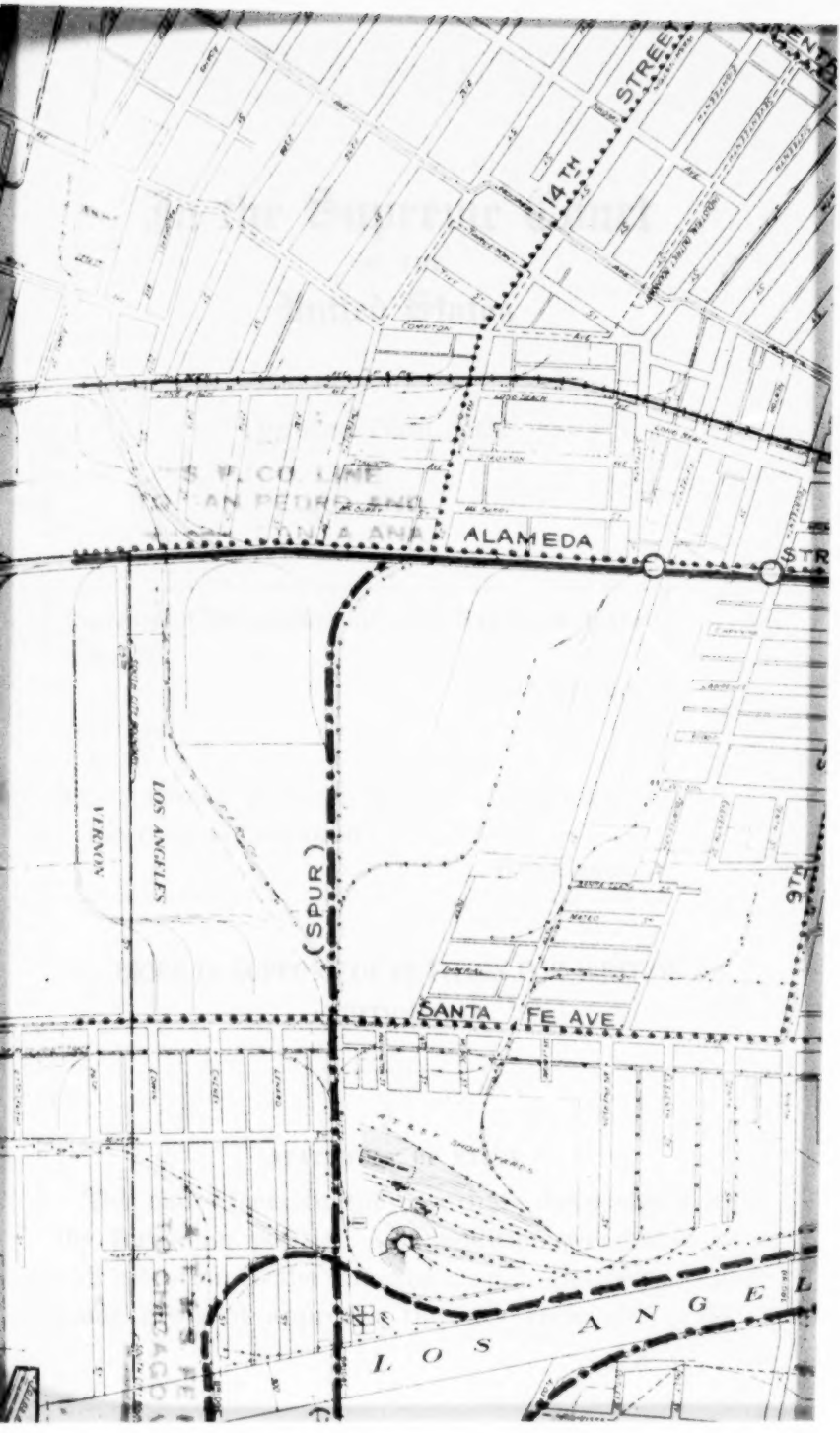
(*l*) The term "common carrier," when used in this act, includes every railroad corporation; street railroad corporation; express corporation; dispatch, sleeping car, dining car, drawing room car, freight, freight-line, refrigerator, oil, stock, fruit, car loaning, car renting, car loading and every other car corporation or person, their lessees, trustees, receivers or trustees appointed by any Court whatsoever, operating for compensation within this state.

(*dd*) The term "public utility," when used in this act, includes every common carrier, pipe line corporation, gas corporation, electrical corporation, telephone corporation, telegraph cor-

poration, water corporation, wharfinger, warehouseman, and heat corporation, where the service is performed for or the commodity delivered to the public or any portion thereof.

SEC. 36. Whatever the commission, after a hearing had upon its own motion or upon complaint, shall find that additions, extensions, repairs, or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any two or more public utilities ought reasonably to be made, or that a new structure or structures should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the commission shall make and serve an order directing that such additions, extensions, repairs, improvements or changes be made or such structure or structures be erected in the manner and within the time specified in said order. If the commission orders the erection of a new structure, it may also fix the site thereof. If any additions, extensions, repairs, improvements or changes, or any new structure or structures which the commission has ordered to be erected, require joint action by two or more public utilities, the commission shall notify the said public utilities that such additions, extensions, repairs, improvements or changes or new structure or structures have been ordered and that the same shall be made at their joint cost, whereupon the said public utilities shall have such reasonable time as the commission may grant within which to agree upon the portion or division of cost of such additions, extensions, repairs, improvements or changes or new structure or structures, which each shall bear. If at the expiration of such time such public utilities shall fail to file with the commission a statement that an agreement has been made for a division or ap-

portionment of the cost or expense of such additions, extensions, repairs, improvements or changes, or new structure or structures, the commission shall have authority, after further hearing, to make an order fixing the proportion of such cost or expense to be borne by each public utility and the manner in which the same shall be paid or secured.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(SPUR)
SANTA FE AVE
LOS ANGELES
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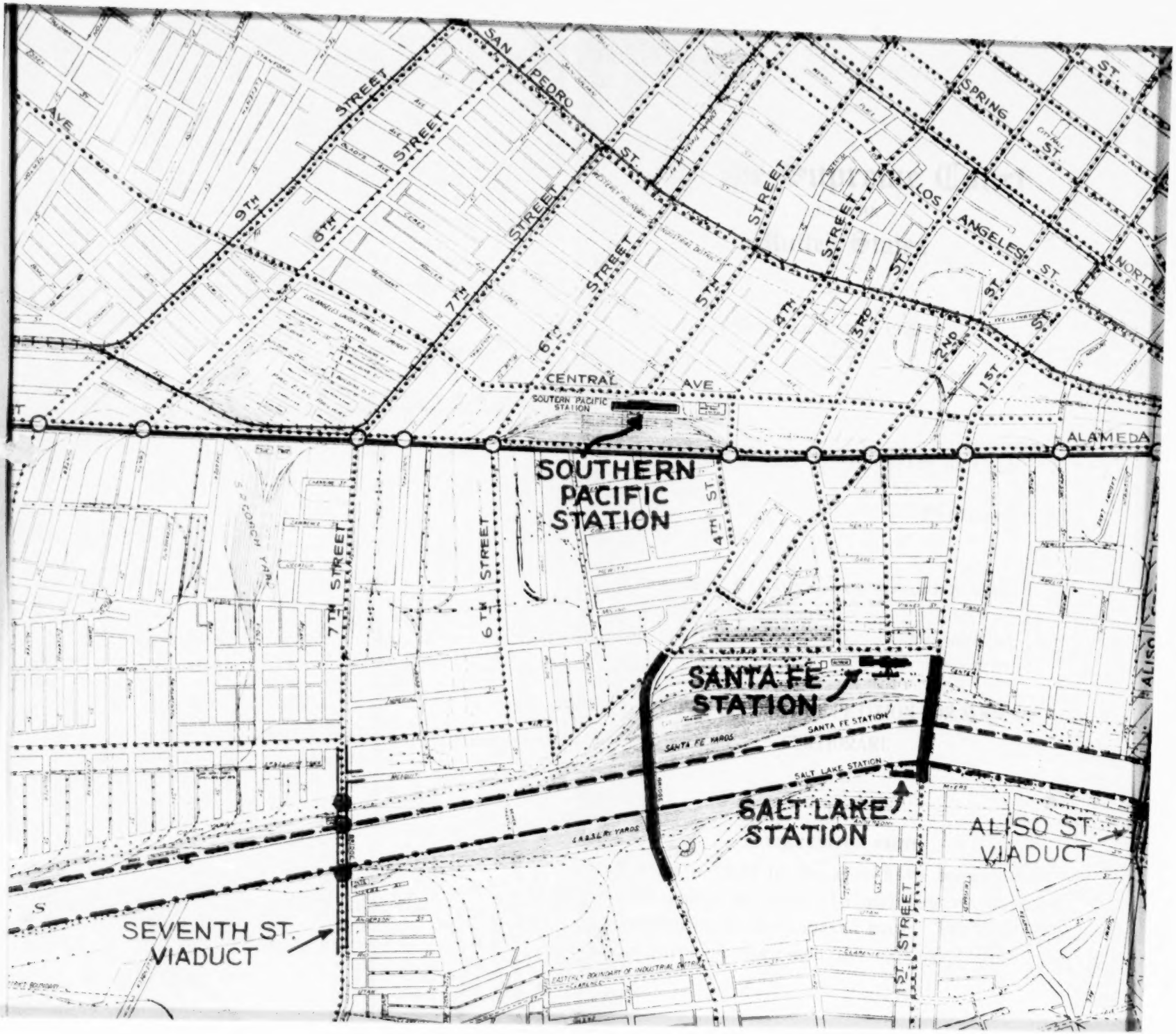
L O S A N G E L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4TH STREET
3RD ST.
2ND ST.
1ST ST.
CENTRAL AVE
SOUTHERN PACIFIC STATION
ALAMEDA
SOUTHERN PACIFIC STATION
7TH STREET
6TH STREET
4TH ST.
SANTA FE STATION
SANTA FE YARDS
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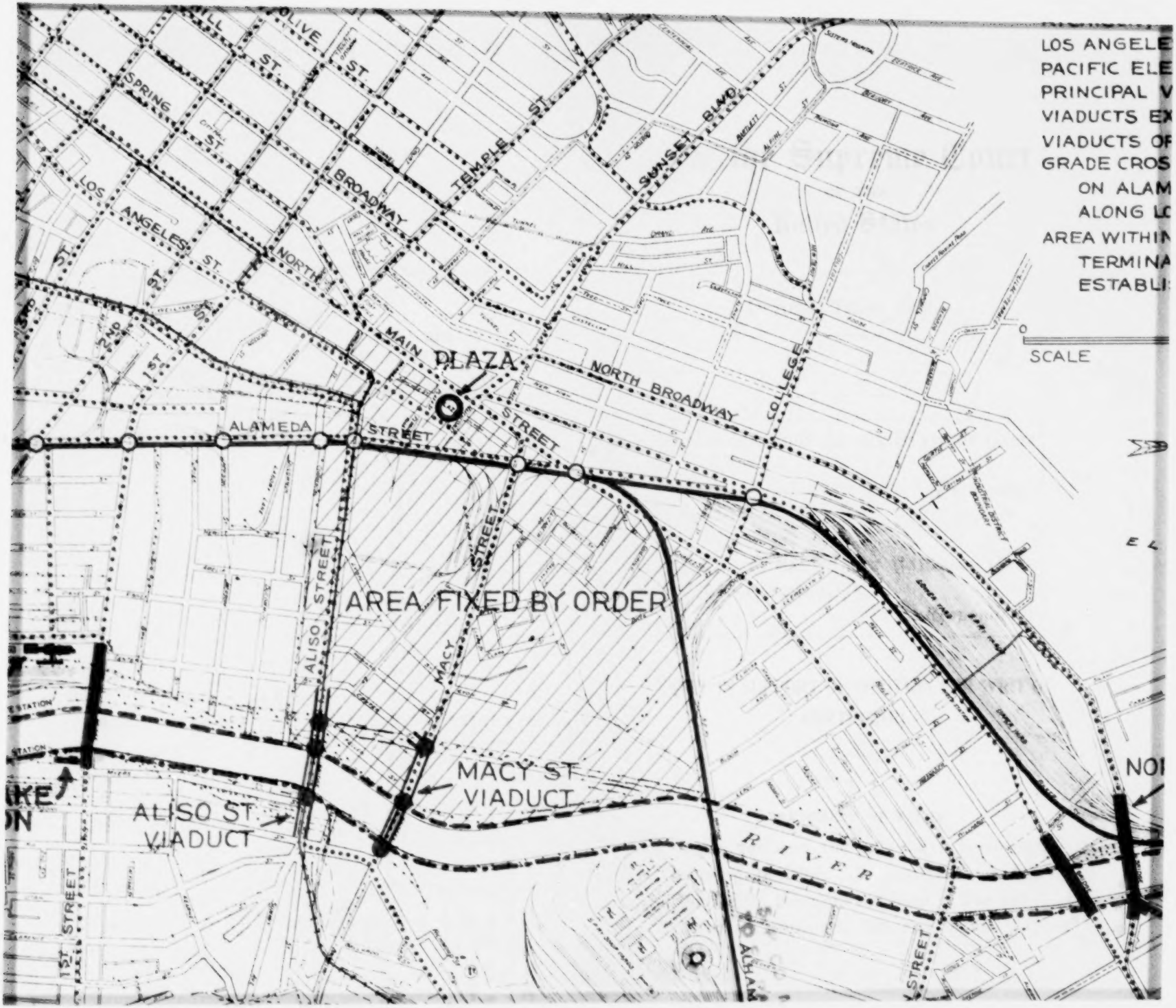
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COLLEGE
ALAMEDA
STREET
AREA FIXED BY ORDER
ALISO STREET
MACY STREET
MACY ST
VIADUCT
ALISO ST
VIADUCT
RIVER
1ST STREET
SPRING ST.
BROADWAY
TEMPLE ST.
SUNSET BLVD
LOS ANGELES ST.
NORTH

ATCHISON, TOPEKA & SANTA FE RY. - MAIN LINE
LOS ANGELES & SALT LAKE R.R. - MAIN LINE
PACIFIC ELECTRIC RAILWAY - INTERURBAN
PRINCIPAL VEHICLE STREETS
VIADUCTS EXISTING
VIADUCTS ORDERED
GRADE CROSSINGS ORDERED TO BE ELIMINATED
ON ALAMEDA STREET
ALONG LOS ANGELES RIVER
AREA WITHIN WHICH UNION PASSENGER TERMINAL IS ORDERED TO BE ESTABLISHED
0
1/4
1/2
3/4
1
SCALE
MILES
SUNSET BLVD.
NORTH BROADWAY
COLLEGE
ELYSIAN PARK
NORTH BROADWAY VIADUCT
SO'U. PAC. CO. MAIN LINE TO SAN FRANCISCO
RIVER
OFFICIAL BED OF RIVER
PIGEON FARM
ARROYO
SAN FERNANDO
ALAMEDA STREET

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1922

No.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,

Petitioner,

vs.

LOS ANGELES & SALT LAKE RAILROAD COMPANY (a corporation),

Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

STATEMENT OF FACTS.

The main facts in the case have been stated in the foregoing petition. In addition we desire to call attention to the annexed map. The three railroads involved approach the city from the north

and come together at a point marked "North Broadway Viaduct" near the top of the map. All three roads pass under this viaduct. From this point the "Salt Lake" and "Santa Fe" lines follow the bed of the Los Angeles River crossing important public highways at grade at Macy Street, Aliso Street and Seventh Street. The order of the commission requires these grade crossings to be eliminated by the construction of viaducts at the points marked on the map "Macy St. Viaduct", "Aliso St. Viaduct" and "Seventh St. Viaduct."

The Southern Pacific line from San Francisco does not follow the river bed but turns after passing under the North Broadway Viaduct and runs in a southwesterly direction till it reaches the north end of Alameda Street. From that point it runs directly south through the city on Alameda Street at grade all the way. The Southern Pacific line from El Paso comes into the city from the east on the avenue marked Alhambra Avenue. It joins the other line just north of "plaza". Alameda Street is a main highway or thorofare through the city and one of the most heavily traveled streets in the city. All the main line traffic of the Southern Pacific lines both from east and north run through Los Angeles at grade longitudinally upon and along this street the rails being flush with the pavement most of the way. Alameda Street is also crossed by 17 other public streets at grade. Some of these are very heavily traveled streets and several of

them carry street and electric interurban cars which cross the Southern Pacific tracks at grade. These crossings are marked by hollow red circles on the map. The commission ordered the Southern Pacific Company to eliminate these grade crossings by removing all traffic from Alameda Street except limited switching movements at night.

The district marked on the map with red diagonal lines and designated "area fixed by the order" is the district within which the carriers were ordered to construct a union depot. It is referred to in the record frequently as the "plaza site" the plaza being a small park in one corner of this area.

It will be seen that the Salt Lake and Santa Fe lines border this designated area and there would be no difficulty in constructing approaches to a union depot from the main lines of these roads. It will also be seen that the San Francisco and El Paso lines of the Southern Pacific pass directly thru this area so that a depot in this area would be easily approached by these lines. The Southern Pacific traffic from the south comes into the city at a point marked "To San Pedro and Santa Ana." But a small proportion of the total Southern Pacific traffic comes in from this direction. It is obvious from an inspection of the map that this southerly traffic can reach the proposed depot site in at least three different ways; by a new line which the Southern Pacific might construct along the river bed reaching the depot in the same way that the southerly lines of the Salt Lake and Santa Fe

reach it; by some arrangement with either the Salt Lake or Santa Fe for a joint use of tracks for southerly traffic; by an amendment to the commission's order permitting the southerly traffic to come into the depot upon the present tracks along Alameda Street.

The order of the commission did not designate any specific plan but required the carriers to prepare their own plans. This has not yet been done.

II.

SPECIFICATION OF ERRORS RELIED UPON.

The errors upon which petitioner relies for the issuance of the writ and for reversal of the judgment were outlined in the foregoing petition. For convenience we will briefly restate them.

The California commission has authority under state law (Section 36, Public Utilities Act, see appendix) to order the three railroad companies to erect a union depot.

The state Court erroneously construed the federal statute amendatory of the Interstate Commerce Act as having deprived the state of this jurisdiction and vested it in the Interstate Commerce Commission.

The state Court failed to give effect to the proviso of Section 1, paragraph 17 of the amended Interstate Commerce Act and to the principle an-

nounced in the case of *Missouri Pacific Railway Company v. Larrabee Flour Mill Company,* 211 U. S. 612.

The subject will be discussed under two heads:

1. The amendments of 1920 to the Interstate Commerce Act vest no power in the Interstate Commerce Commission relative to union passenger depots.

2. If the amendments of 1920 should be construed to cover the subject of union depots nevertheless the state's power remains unimpaired and the state commission's order is valid unless the interstate commission makes an inconsistent order.

III.

ARGUMENT.

1. The Amendments of 1920 to the Interstate Commerce Act vest no power in the Interstate Commerce Commission relative to union passenger depots.

The state Court based its decision that the interstate commission has exclusive jurisdiction over union depot facilities mainly upon Section 15a; Section 5, paragraphs 4 and 5; Section 1, paragraphs 3, 10, 1, 18, 21, 22; Section 3, paragraphs 3 and 4 and Section 1, paragraph 20, of the Amended Interstate Commerce Act. A brief reference to these provisions in the order discussed by the state Court is essential.

Section 15a. This section is referred to only as showing generally the greatly enlarged powers of the interstate commission and its affirmative duty to maintain an adequate railway service for the people of the United States.

Section 5. (Pars. 4 and 5.) These paragraphs relate to the general plan for the consolidation of railway properties of the United States into a limited number of systems. They are quoted in the decision as being expressive of the enlarged scope and purposes of the Act.

Section 1. (Pars. 3 and 10.) These provisions are referred to to show the definitions of the terms "railroad" and "car service."

None of the sections thus far mentioned make any reference to depots or terminal facilities.

Section 1. (Par. 1.) This section refers only to cases where the commission is of the opinion that an emergency exists. It gives the interstate commission powers when an emergency exists to (a) suspend established rules, (b) to make directions relative to car service, (c) to require joint use of terminals, including main line tracks for a reasonable distance outside of such terminals. This language does not authorize the interstate commission to require the erection of a new union depot for permanent use but refers to the joint use during emergencies of existing terminals. In the present case an emergency did not exist and the state

commission did not order the joint use of any existing terminal or any main line tracks.

Section 1. (Par. 18.) This provision refers to the construction, extension and abandonment of railroad lines and provides for the issuance of certificates of public convenience and necessity therefor. It was fully considered by this Court in *Texas v. Eastern Texas Ry. Co.*, U. S. Adv. Ops. 1921-22, p. 313. In the argument before the state Court and in the Court's decision, considerable importance was attached to this paragraph because the order of the state commission requires in connection with the elimination of grade crossings, the abandonment of certain traffic on Alameda Street within the City of Los Angeles. It was said that subdivision 18 of Section 1 deprived the state of the power to require the abandonment of any part of a line of railroad.

Reference to the actual order (Transcript, pp. 142-151 inc.) will show that the commission ordered neither the construction or abandonment of a "line of railroad." True, the erection of a new union depot and the elimination of grade crossings will require a rearrangement of traffic. Some new track may have to be laid and some old track abandoned. Reference to the map annexed to the petition will show that the amount of new track necessary to construct to enable the three roads to reach the area specified for the depot is very small. When it is all done there will be no change in the service

rendered to the public except that it will be improved.

The Interstate Commerce Commission has held that relocations of trackage of the kind here in question, where the changes have no effect on the service to the public, do not constitute either the construction or abandonment of "lines of railroad" within the meaning of par. 18, Sec. 1 of the Interstate Commerce Act.

In the matter of the Application of the Philadelphia, Newtown & New York Railroad for a certificate of public convenience and necessity, 67 I. C. C. Rep. 252, decided March 11, 1921.

Application of the Pearl Valley Railroad Company, 67 I. C. C. Rep. 748, decided June 14, 1921.

In the latter case 2.62 miles of main line track were abandoned but inasmuch as the service to the public was not affected no certificate was deemed necessary.

This construction is further borne out by the case of *Texas v. Eastern Texas Railroad Co.* (U. S. Adv. Op. 1921-22, 313). This Court in that case had before it paragraph 18, Section 1, of the Interstate Commerce Act. The question was, to what extent the interstate commission had jurisdiction under the amendments of 1920 over the abandonment of a railroad doing both interstate and intrastate commerce.

Referring to paragraph 18 and subsequent provisions, the Court said:

> "By them Congress has undertaken to regulate the construction and acquisition of new or additional lines of railroad and the extension and abandonment of old lines."

The "line of railroad" which the Court was discussing was a line 30 miles long. Its abandonment meant that a large territory and many people would cease to have any railroad service (by the road in question) at all.

The Supreme Court referred to the application as "an application for a certificate authorizing it to abandon and cease operating its road." This implies a complete cessation of service. Here, the carriers will not abandon or cease operating their roads or any part of them. They will merely shift their lines in such a way as to carry on the same operations they do now, but with more safety and convenience to the public.

Section 1. (Pars. 21 and 22.) Paragraph 21 authorizes the interstate commission to require any carrier to provide adequate facilities for performing "its car service as that term is defined in the Act" and to extend its line or lines. The term "car service" is defined in paragraph 10 of Section 1 and has to do with the supply, distribution and exchange of cars and locomotives. The clause as to extension of lines is similar to that found in paragraph 18 of Section 1, except that paragraph 18 applies to cases where permission to extend is

sought by the carrier and paragraph 21 applies to cases where the carrier is ordered to extend by the commission upon its own initiative or upon complaint. In neither case is a mere rearrangement of existing trackage an extension of a "line of railroad" within the meaning of these provisions. Paragraph 22 exempts from the authority of the commission, conferred by paragraphs 18 to 21 inclusive, all construction or abandonment of spurs, industrial tracks, etc., located wholly within one state.

Section 3. (Paragraphs 3 and 4.) Paragraph 3 refers to the interchange of traffic between different carriers. It was not claimed in any of the briefs before the state Court that the order of the state commission requires any interchange of traffic and in our opinion this paragraph has no bearing on the issue before the Court.

Paragraph 4 refers to existing terminal facilities. The paragraph reads as follows:

> "If the commission finds it to be in the public interest and to be practicable, without substantially impairing the ability of a carrier owning or entitled to the enjoyment of terminal facilities to handle its own business, it shall have power to require the use of any such terminal facilities, including main-line track or tracks for a reasonable distance outside of such terminal, of any carrier, by another carrier or other carriers, on such terms and for such compensation as the carriers affected may agree upon, or, in the event of a failure to agree on such terms as the commission may fix as just and reasonable for the use so required, to be

ascertained on the principle controlling compensation in condemnation proceedings. Such compensation shall be paid or adequately secured before the enjoyment of the use may be commenced. If under this paragraph the use of such terminal facilities of any carrier is required to be given to another carrier or other carriers, and the carrier whose terminal facilities are required to be so used is not satisfied with the terms fixed for such use, or if the amount of compensation so fixed is not duly and promptly paid, the carrier whose terminal facilities have thus been required to be given to another carrier or other carriers shall be entitled to recover, by suit or action against such other carrier or carriers, proper damages for any injuries sustained by it as the result of compliance with such requirement, or just compensation for such use, or both, as the case may be."

A comparison of this paragraph with Section 36 of the California Public Utilities Act will show that there is no conflict or inconsistency between them. Paragraph 4 refers to a "carrier owning or entitled to the enjoyment of terminal facilities." It provides for the use of the "terminal facilities including main line track for a reasonable distance outside such terminal" of one carrier by another carrier. It provides that "the carrier whose terminal facilities are required to be so used" may recover compensation. These expressions plainly mean existing terminal facilities. The order of the state commission requires the erection of a new union terminal at a new site, considerably removed from any of the existing depots. Obviously there

can be no joint use of the existing terminals of one carrier by another under this order. Instead, the matter falls within the terms of Section 36 of the California Act. In this statute there is specific provision for the erection of "a new structure or structures"; for "fixing the site thereof" and for "joint action" in erecting any "new structure."

It may be claimed that the state commission's order cannot be obeyed without a joint use of certain existing facilities such as main line tracks; and that the order is for that reason repugnant to the provisions of paragraph 4. This claim is based solely on the fact (set forth in the petition) that four plans for a depot at the site finally designated were proposed by witnesses and all these plans provided for some joint use of main line trackage. As stated in the decision of the commission (see Petition p. 5) and as is obvious from the commission's order the commission did not order the railroad companies to carry out any of these proposed plans. It simply ordered them to construct a depot somewhere within a large area according to plans which they themselves were to prepare. To say that no possible plan for a union depot can be devised which does not require a joint use of tracks is merely to speculate in advance of any attempt to prepare final plans. We may concede that the carriers would find it less expensive to comply with the order if they would arrange for some joint use of trackage. The witnesses who presented the plans referred to were

not considering the effect paragraph 4, Section 3 of the Interstate Commerce Act might have on the jurisdiction of the state commission if a joint use of tracks was had; they were merely considering the simplest way from an engineering standpoint of rearranging the tracks so as to bring the various lines to the proposed depot site and eliminate the grade crossings on Alameda Street. These plans were prepared and submitted at hearings held prior to the enactments of 1920. At that time the question of constructing a depot without joint use of tracks was not being considered. Subsequent to 1920 the commission inspected the premises and maps and made its order. An inspection of the map attached to the petition herein will show clearly that there is no obstacle to the construction of a union depot within the area designated without the joint use of existing tracks or other facilities. In view of the facts that no joint use of facilities was ordered by the commission; that no final plans have been prepared and that no attempt has been made to comply with the order, we submit that the objection that the order is repugnant to paragraph 4 of Section 3 because it will necessitate a joint use of tracks is wholly inconsistent and unfounded.

Section 1. (Paragraph 20). The last reference made by the state Court to the interstate act is to paragraph 20, Section 1. This paragraph prohibits the railroads from making any constructions or abandonments of lines of railroad without the

consent of the interstate commission. The prohibitions of the paragraph refer expressly to paragraphs 18 and 19 of Section 1. They do not refer to existing terminal facilities which are covered by Section 3, paragraph 4. The state Court erroneously construed paragraph 20 to apply to "the extension of railroad facilities and the abandonment of other railroad facilities, *including terminals.*" Upon this erroneous construction the Court based its conclusion that Congress has fully occupied the field of regulation "of the extension of terminal facilities."

The Court also erroneously construed the commission's order as requiring extensions and abandonment of lines of railroad. As already shown the order required no construction or extension of new lines or abandonment of old lines within the meaning of the act as construed by the interstate commission. Nor did the order require any joint use of facilities. The prohibitions of Section 20 therefore do not terminate the power of the state commission to make the order which it did make.

We have discussed all the sections of the interstate act relied upon by the Court and submit that not one of them vests in the interstate commission the power to order carriers to erect a new union depot or deprives the state of the power to do so. The fact that many kinds of regulations are specifically provided for in the act, as for instance interchange of traffic, switch connections, car service, securities, extensions into new territory, consolidation

of lines, etc., while the act is silent as to any regulation concerning new union depots indicates that the latter are not covered by the act. The familiar principle that the mention of specific matters excludes others is applicable here and excludes any possibility of the jurisdiction over new union depots being conferred on the interstate commission by the general provisions referred to in the above resume as being indicative of the scope of the act.

If, after plans are prepared for a union depot in compliance with the state commission's order, it should be deemed advisable to invoke the jurisdiction of the Interstate Commerce Commission in connection with any part of the work such as a joint use of tracks or for the issuance of securities, there is no reason why application therefor cannot be made to the interstate commission at that time. The present validity of the state commission's order is not affected by this possibility. Under well settled state law an order of the Railroad Commission is not invalid merely because the order cannot be carried out until some other public authority takes additional or concurrent action.

Motor Transit Company v. Railroad Commission, 64 Cal. Dec. 278, 209 Pac. 586;

Oro Electric Company v. Railroad Commission, 169 Cal. 466, 147 Pac. 118;

Turner Creamery Co. v. Chicago, Milwaukee & St. Paul R. R., 154 N. W. 819, P. U. R. 1916 A 1083.

It is our belief that the provisions of the Act above referred to are so clear that there can be no doubt as to their meaning. We are mindful of the rule that when the language of an act is clear to the Court, the legislative history of the act cannot control the interpretation. If, however, there should exist any doubt in the mind of the Court as to whether the sections above outlined deprive the state of its jurisdiction relative to union depots, we ask the Court's attention to the Congressional Record of November 15, 1919.

While the Esch-Cummins bill was being debated on the floor of the House of Representatives, Congressman McClintic of Oklahoma offered the following amendment (Congressional Record, November 15, 1919, p. 9067):

> "Provided, further, that the Commission is hereby given authority to require a carrier to maintain its present arrangement or to make new arrangements relative to the joint use of depots, upon such terms as shall be found by the Commission to be just and reasonable. No carrier shall be allowed to discontinue the use of a depot in connection with another carrier until proper application has been made to the Commission."

The purpose of this amendment, as explained by Congressman McClintic (pp. 9067, 9068), was to give the Interstate Commerce Commission jurisdiction over union passenger depots, largely for the purpose of preventing the railroad companies from tearing apart the unification of passenger depots so extensively established by the Government during

the federal operation of the railroads. Chairman Esch opposed the adoption of the amendment on the ground that jurisdiction over such matters had always been vested in the various states and should continue to be exercised by them. Chairman Esch said (Congressional Record, November 15, 1919, p. 9068):

> "Mr. Chairman, the matter which the gentleman from Oklahoma seeks to reach by his amendment lies almost wholly within the police power of the several states. There have been amendments offered to this bill seeking to preserve such police powers. The committee in framing the bill has sought not to encroach upon such powers. The matter of depots and joint use of depots is practically in the jurisdiction of the state commissions and all but one of the states have such commissions. In such small matters the detail should be left within the jurisdiction of the state authorities, who know the situation, know the conditions and know how best to meet the needs. There is, however, a provision in this bill providing for the joint use of terminals."

Mr. McClintic thereupon offered to withdraw the amendment, but another member insisted on having a vote thereon. Thereafter his amendment, which would have conferred upon the Interstate Commerce Commission jurisdiction over union passenger depots, was rejected (Congressional Record, November 15, 1919, p. 9071), thereby clearly indicating an intention that jurisdiction over union passenger depots should not be taken away from the states.

The above quotations refer only to the rejection of the amendment on the floor of Congress and to the

statement of the chairman of the committee having the bill in charge. It has been held that the courts may look to both these sources when in doubt as to the meaning of a statute.

United States v. Delaware & Hudson Co., 213 U. S. 366;

U. S. Printing Co. v. Deering, U. S. Adv. Op. 1920-21, pp. 176, 182.

2. If the Amendments of 1920 should be construed to cover the subject of union depots nevertheless the state's power remains unimpaired and the State Commission's Order is valid unless the Interstate Commission makes an inconsistent order.

In all its discussion of the amended Interstate Commerce Act the state Court made no mention of the proviso at the close of paragraph 17, Section 1. This proviso reads as follows:

> "Provided, however, that nothing in this act, shall impair or affect the right of a state, in the exercise of its police power, to require just and reasonable freight and passenger service for intrastate business, except in so far as such requirement is inconsistent with any lawful order of the commission made under the provisions of this act."

This proviso in plain terms preserves the police power of the state to require just and reasonable freight and passenger service for *intrastate* business. The fact that a carrier may also be engaged largely in interstate business does not deprive the state of this reserved power *unless* the state makes a requirement that is

"inconsistent with any lawful order of the commission (interstate) made under the provisions of this act."

The order made by the California commission was to require just and reasonable service of three railroads engaged largely in intrastate business. This order was certainly not inconsistent with any lawful order of the Interstate Commerce Commission for the obvious reason that the interstate body has made no order at all. Until it makes an order and unless the requirement of the state commission conflicts with that order, the state will retain full power to require just and reasonable passenger service of any railroad doing intrastate business regardless of the fact that such road also does interstate business.

The proviso in paragraph 17 is in effect a congressional enactment of the principle announced in *Missouri Pacific Ry. Co. v. Larrabee Flour Mill Co.*, 211 U. S. 612, viz., that even when Congress has entered a particular field of interstate commerce and has authorized the Interstate Commerce Commission to exercise jurisdiction therein, nevertheless unless the matter is one to be handled by general rule or regulation, the states may continue to act as to particular situations unless and until the interstate commission takes action as to such particular situations.

In the Larrabee case the state Court, by a writ of mandamus, ordered the Missouri Pacific Railroad Company to transfer and return cars loaded and unloaded from the line of the Santa Fe Railroad to

the mill and elevator of the Larrabee Flour Mills Company. The Missouri Pacific line was engaged in interstate commerce and about three-fifths of the flour of the mill company was shipped out of the state.

The contention was made that the Missouri Pacific and Santa Fe companies were common carriers engaged in interstate commerce, and, as such, were subject to the control of Congress, and therefore not amenable to the power of the state. At that time (1908), the Interstate Commerce Act was in force and the Interstate Commerce Commission had power to act in respect to the particular matters involved.

On principle, therefore, the situation was identical with that here under discussion. A requirement relative to service had been made by the state. The railroad involved was engaged largely in interstate commerce. In fact, the requirement made by the state acted directly upon interstate commerce. Congress had acted by creating the Interstate Commerce Commission and *vesting it with full power to regulate the very matter which was at issue.*

This Court said:

> "On the other hand, it is said that Congress has already acted,—has created the Interstate Commerce Commission, and given to it a large measure of control over interstate commerce. But the fact that Congress has intrusted power to that commission does not, in the absence of action by it, change the rule which existed prior to the creation of the commission. Congress could always regulate interstate commerce, and could make specific provisions in reference

thereto, and yet this has not been held to interfere with the power of the state in these incidental matters. A mere delegation by Congress to the commission of a like power has no greater effect, and does not of itself disturb the authority of the state. It is not contended that the commission has taken any action in respect to the particular matters involved. It may never do so, and no one can, in advance, anticipate what it will do when it acts."

In the present instance the state Court, in its decision, said that this case of *Missouri v. Larrabee* is inapplicable because it was decided in 1909, several years prior to the attempt on the part of Congress to invest the Interstate Commerce Commission with jurisdiction over extensions or changes in interstate railroad lines.

The power of Congress to regulate interstate commerce, although supreme and exclusive, remains dormant until actually exercised. (Chief Justice Marshall in *Willson v. Black Bird Creek Marsh*, 2 Pet. 251; 7 L. ed. 414.) But the mere enactment of laws by Congress does not arouse this dormant power unless those laws are of such nature as to exclude any action by the states.

Cooley v. Port Wardens, 12 How. 316;

Sturges v. Crowinshield, 4 Wheat. 193;

Cleveland etc. v. Illinois, 177 U. S. 514; 44 L. ed. 868;

No. Pac. R. R. Co. v. Washington, 222 U. S. 370; 56 L. ed. 237;

Atl. Coast Line Ry. v. State of Georgia, 234 U. S. 280; 50 L. ed. 1312.

A law of Congress forbidding train crews to remain on duty more than 16 consecutive hours was a complete exercise of the dormant power to regulate that phase of the interstate commerce. Nothing remained to be done to make the law effective. It applied instantly to every train crew on every train engaged in interstate commerce regardless of the fact that such a crew might at the same time be engaged in intrastate commerce. No hearing by a commission or findings and orders were necessary. Nothing the state could do would add to or take away from the scope of the requirement. The hitherto dormant power of Congress was fully exercised, and this field of regulation fully occupied. (*No. Pac. R. R. Co. v. Washington*, 222 U. S. 370.)

Not so with depots. Before a depot can be required there must be an investigation of particular conditions and hearing, findings and a specific order must be made. Congress might conceivably do this itself. But if it delegates this power to a subordinate commission, still the power remains dormant until that subordinate commission exercises it.

In the *Larrabee* case Congress had delegated to the Interstate Commerce Commission powers of control over the particular matter in question. But that commission had not acted, and, as the Court said, it might never act, therefore, the federal power still remained dormant, and the state was free to make those regulations conducive to the welfare of its citizens. We submit that what the Court said in the *Larrabee* case applies as well to the delegations

of power made by Congress in the Act of 1920 as to those made by earlier enactments.

The case chiefly relied upon by the state Court is *People ex rel New York Central Railroad Company v. Public Service Commission,* 233 N. Y. 113. It was cited as a case approaching identity with the case at bar. In that case the state commission ordered two railroads to make track connections to permit interchange of freight.

We submit that the case is not in point because Section 3 of paragraph 3 of the Interstate Act as amended specifically provides for the interchange of traffic and the New York Court held that the New York law did not authorize the state commission to make such a requirement. Here the situation is exactly opposite. The interstate act does not provide for new union depots and the California law specifically does so.

For the reasons above set forth petitioner respectfully asks that the petition for a writ of *certiorari* be granted.

Dated, San Francisco,
March 21, 1923.

Respectfully submitted,
HUGH GORDON,
WILLIAM W. CLARY,
Attorneys for Petitioner.

NOTICE OF DATE FOR SUBMISSION.

To Los Angeles and Salt Lake Railroad Company, Respondent herein and to A. S. Halsted and Fred E. Pettit, Jr., Esqs., Los Angeles, California, its Attorneys:

Please take notice that the foregoing petition for writ of certiorari will be presented to the Supreme Court of the United States on Monday, the 16th day of April, 1923.

Dated, San Francisco,
March 21, 1923.

HUGH GORDON,
WILLIAM W. CLARY,
Attorneys for Petitioner.

ADMISSION OF SERVICE.

Due service and receipt of a copy of the within petition for writ of certiorari to the Supreme Court of the State of California, brief in support thereof and notice of date for submission thereof is hereby admitted this 23rd day of March, 1923.

A. S. HALSTEAD,
FRED E. PETTIT, JR.,
Attorneys for Respondent.

Copy

APR 18 1923

WM. R. STANSBURY
CLERK

IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term, 1922.

No. 986 285

Railroad Commission of the State of California,

Petitioner,

vs.

Los Angeles & Salt Lake Railroad Company (a Corporation),

Respondent.

RESPONDENT'S BRIEF

In Answer to Petition for Writ of Certiorari to the Supreme Court of the State of California and Brief in Support Thereof.

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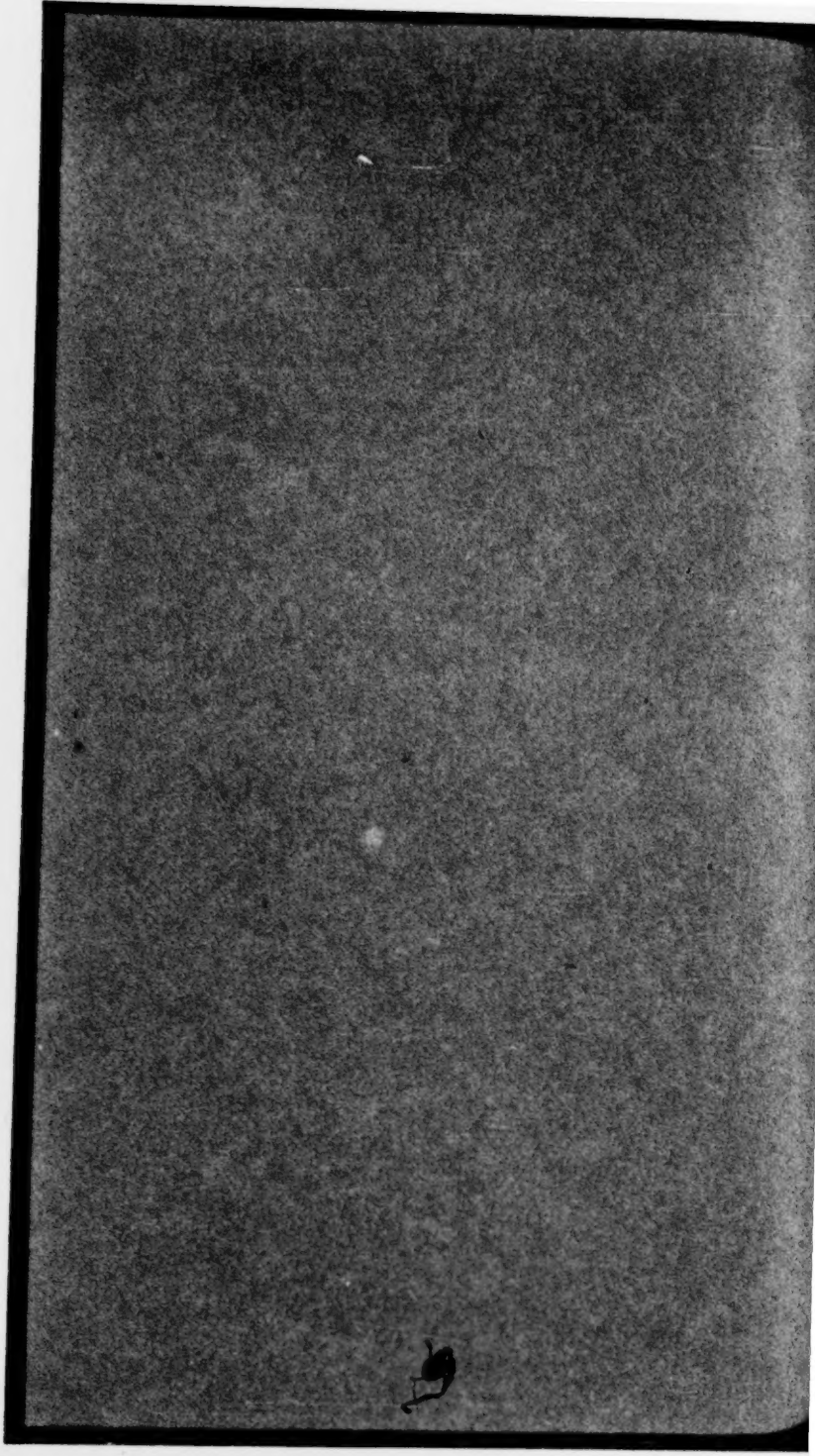

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NOTE.

The petitioner, Railroad Commission of the state of California, has filed three petitions for writs of certiorari to the Supreme Court of the state of California, entitled as follows:

(1) Railroad Commission of the state of California, petitioner, vs. Southern Pacific Company (a corporation), and Southern Pacific Railroad Company (a corporation), respondent.

(2) Railroad Commission of the state of California, petitioner, vs. Atchison, Topeka & Santa Fe Railway Company (a corporation), respondent.

(3) Railroad Commission of the state of California, petitioner, vs. Los Angeles & Salt Lake Railroad Company (a corporation), respondent.

These petitions and the briefs accompanying them are identical in subject matter and differ only in the titles of the proceedings. In all three of these cases the transcript of record is the same. An original of this brief is therefore filed in each of the three cases, together with the usual number of copies. These bear the titles, however, of the proceedings in which filed.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term, 1922.

No.....

Railroad Commission of the State of California,

Petitioner,

vs.

Los Angeles & Salt Lake Railroad Company (a Corporation),

Respondent.

RESPONDENT'S BRIEF

In Answer to Petition for Writ of Certiorari to the Supreme Court of the State of California and Brief in Support Thereof.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

While a respondent is not required by the statutes or rules of court to file a brief in answer to a petition for a writ of certiorari, the

instructions relative to applications for writs of certiorari, under the Acts of March 3rd, 1891, and September 6th, 1916, contemplate his doing if he so desires. In this case the respondent deems it desirable to do so, primarily for the purpose of pointing out just what facilities of the railroads will have to be abandoned if the order of the Railroad Commission of the state of California is carried out, and secondly, what extensions and joint trackage arrangements will have to be provided in order to comply with the terms of that order. Jurisdiction over these matters is expressly vested in the Interstate Commerce Commission under the Transportation Act, 1920, and for that reason alone the decision of the Supreme Court of the state of California is clearly right. These facts and conclusions may be amplified.

Abandonment of Existing Facilities.

Let us refer to the map attached to the petitoin. All trains of the Southern Pacific, upon its line to San Pedro and the Harbor District, and all of its trains to and from Santa Ana and its several branches in Orange county, now move along Alameda street. All passenger trains to and from San Francisco and other points to the north, and all passenger trains upon its main line to El Paso, move along Alameda street northerly of Fourth street. These "operations"

along Alameda street, a distance of approximately three miles, according to the terms of the order must be discontinued and abandoned, only local switching being permitted.

The passenger station of the Southern Pacific is located at the intersection of Fifth street and Central avenue. This is a modern structure, completed in 1915. While the order does not expressly provide for its abandonment its effect is precisely that, for if passenger trains cannot be run into and out of such a station it thereupon ceases to be a passenger station.

The Santa Fe and Salt Lake passenger stations are located respectively westerly and easterly of the Los Angeles River, near its intersection with First street. While it is conceivably possible that these two stations might still be used as such after completion of a union depot in the Plaza district, as contemplated by the Railroad Commission, the fact nevertheless remains that in practical effect the enforcement of the order will render these properties useless and will result in their abandonment.

Extensions and Joint Trackage Arrangements Necessary Under the Railroad Commission's Order.

Since all train movements except local switching are ordered discontinued along Alameda street, the Southern Pacific would have to seek a new route through the city, north to south,

What routes are open to it?

It might make use of the tracks of the Santa Fe along the westerly bank of the river—the Santa Fe's principal terminal facilities in the city—by the construction of connecting tracks between the two lines in the southerly portion of the city, and the construction of other connecting tracks in the north central portion of the city.

Or it might make use of the tracks of the Salt Lake along the easterly bank of the river —the latter's principal terminal facilities in the city—by the construction of similar connecting tracks. This would, however, occasion crossing and again recrossing the river.

Or it might build a new line of its own through the city, but this is entirely impracticable due to the enormous expense of constructing a line of such length through the heart of the industrial section of a large city.

The Salt Lake would have to build an extension or new line across the river to reach the area defined by the commission as the site for a union station.

The Southern Pacific main line to and from the east borders this site on the north as does the Santa Fe on the east, and it is conceivably possible to bring trains upon those lines into a depot located within the area mentioned, without serious operating difficulties. However, it

would be extremely difficult to handle Southern Pacific trains from and to the north, into and out of such a station without some switching back and forth, which is of course contrary to good operating methods. This objection might be obviated by the construction of other extensions of line, but this only emphasizes the fact that the order of the Railroad Commission does contemplate, actually and in practical effect, extensions of very considerable magnitude, together with joint use of certain main line tracks and terminal facilities now separately owned and operated.

The petitioner seeks to avoid the issue raised by this situation, by saying that the abandonment of facilities and the construction of extensions and the joint use of facilities are not contemplated by the express terms of the order as made, but the fact remains that such is the necessary effect of the order. The Railroad Commission has no power to do indirectly what it cannot do directly.

We shall not discuss in this brief constitutional questions respecting an order of any commission directing a public utility to expend large sums in acquiring new property and devoting it to a public use.

Corrections in Petitioner's Statement of Facts.

On pages 15 and 16 of petitioner's brief it is stated:

"The three railroads involved approach the city from the north and come together at a point marked 'North Broadway Viaduct' near the top of the map. All three roads pass under this viaduct."

While literally true, the statement gives a somewhat false conception of the true situation. The Southern Pacific trains to the north pass this point, as do those of the Santa Fe via Pasadena. The Salt Lake has but a branch to Pasadena and that is the line referred to. All of the Santa Fe trains on its main line to the east through Fullerton, and to San Diego, move through the southerly portion of the city, as do those of the Southern Pacific on its Santa Ana and San Pedro branches. All of the main line trains of the Salt Lake and its San Pedro branch line trains enter and leave through the southerly portion of the city. The main line of the Southern Pacific to the east does not pass near the North Broadway viaduct.

On page 17 of petitioner's brief it is stated that the Salt Lake line borders the area prescribed by the Railroad Commission. This is not the fact, for it will require the construction of an extension of the Salt Lake line crossing the river, to reach the area mentioned.

The Transportation Act of 1920 Vests in the Interstate Commerce Commission Sole Power and Authority to Order or Permit Joint Use of Railroad Facilities. That Field Is Thereby Completely Occupied, to the Exclusion of any Right of State Commissions to Act in the Premises.

In the decision of the Supreme Court of California, of which petitioner seeks a review, is a clear exposition of the new policy of the federal law with reference to the railroads. And in the recent cases of Akron, Canton & Youngstown Railway Company *et al.*, v. The United States *et al.*, (The New England Divisions' case), decided by this court on February 19th, last, and in Railroad Commission of Wisconsin v. Chicago, Burlington & Quincy R. R. Company, 257 U. S. 563, this court has in no uncertain language recognized and given effect to the greatly broadened powers of the Interstate Commerce Commission, under the Transportation Act, 1920.

The Supreme Court of the state of California has recognized in the instant case that the order of the Railroad Commission, requiring as it did the construction and extension of lines of railroad, the abandonment of operations upon a very important section of main line of one of the railroads, and the joint use of terminal fa-

cilities and the construction of certain extensions, infringed upon these newly granted powers of the Interstate Commerce Commission.

As to joint use of terminal facilities: Petitioner's brief says, page 26, that the order does not require any joint use of facilities; but this seems to be intended to apply to present or existing facilities and to admit that there is to be and must be a joint use of the new station and the facilities appurtenant thereto.

It is clear that under the provisions of paragraphs 3 and 4 of section 3 of the Interstate Commerce Act the power to order such joint use of a terminal is now vested in the Interstate Commerce Commission. In answer to this, the petitioner cites the case of Missouri etc. v. Larrabee etc., 211 U. S. 612, 53 L. Ed. 352, in support of the proposition that although the act may have vested such power in the Interstate Commerce Commission, yet until that commission asserts and exercises the power the state's authority abides the same as if Congress had not acted at all. In other words, petitioner contends that Congress having been delegated the power to regulate interstate commerce, may itself delegate to the commission the right to say whether or not that power shall be exercised, and this is plainly contrary to the common maxim *delegatus non potest delegare*.

But we shall certainly not attempt here to question any ruling made by this court. Our view of the Larrabee case and of its inapplicability here is best illustrated by four cases recently decided in the state courts.

The first of these, to which we invite the court's most careful attention, is the very recent decision of People v. Public Service Com. (Court of Appeal, New York), 233 N. Y. 113, 135 N. E. 195. It is stated in that opinion that in September, 1920, the Public Service Commission made an order requiring the N. Y. Central and the Lehigh to make such track connections between their lines in and near Batavia, N. Y., and lay such other tracks and facilities as "may be necessary to establish and furnish adequate and convenient interchange of freight; that the connection be made by repairing and completing the track now connected with the tracks of the Lehigh and extending to a point near the track of the N. Y. C., which track was formerly connected with the tracks of the N. Y. C."

In the second division of the opinion the court quotes the second paragraph of section 3 of the Interstate Commerce Act as amended by the Transportation Act of 1920, section 405, and says:

> "To sustain the order of the Public Service Commission in the instant case would necessarily establish that the two several

> commissions mentioned were clothed with jurisdiction to grant the relief sought and require us to ignore the well-established principle of law that the Congress, having delegated to the Interstate Commerce Commission power to deal with the subject matter of this proceeding, an exercise of like power by the state is thereby superseded." (Citing cases.)

Another case to which we may refer is, The People of the State of New York, *ex rel.*, the New York Central Railroad Company, v. Public Service Commission of the State of New York, 198 Appellate Division 436, 191 New York Supplement 636, which was affirmed in a memorandum opinion of the New York Court of Appeals, reported in 134 Northeastern 590, that court simply saying that the subject matter of the controversy had, by the Transportation Act of 1920, been relegated to the Interstate Commerce Commission. Thereafter, application was made to this court for a writ of certiorari, and that was denied without an opinion (257 U. S.——, 42 Sup. Ct. 314, 66 Law Edition——).

In Louisville and Nashville v. The State, 16 Ala. App. 199, 76 So. Rep. 505, the Supreme Court of that state reviewed the opinion by the Court of Appeals. That case involved what is known as the Railroad Headlight Law of Ala-

bama, which required a headlight of a certain candlepower to be used on every locomotive.

The Supreme Court of Alabama, page 514 of the Reporter, said:

> "When the mandatory act of Congress approved March 4, 1915, is read in connection with the Safe Locomotive Boilers Act of February 17, 1911, we cannot escape the conclusion that the intention of Congress is plain that the states must be excluded from the right to legislate within the field to which the several original acts and the mandatory act extended the federal authority. It is immaterial that the final rules on the subject of headlights to be used on such locomotives were not promulgated by the Interstate Commerce Commission until, respectively, June 6 and December 26, 1916, after the commission of the alleged offense for which the prosecution was had.
>
> "We are of the opinion that the act of the Alabama Legislature of July 17, 1915, is contrary to the express purpose and scope of the mandatory act of Congress of March 4, 1915, and that as to engines engaged in interstate commerce it has no application."

Another case closely analogous to the case at bar is that of State v. Atlantic C. L. R. R. Co., ... Fla. ..., 87 So. Rep. 773, decided February 15, 1921. This case involved a section of the Transportation Act of 1920, the same act which we are here invoking, but a section of the act which is not here involved, namely, the section

amending section 6, subdivision 13-A of the Interstate Commerce Act.

The court says:

> "Until Congress acted, there could be no question of the power of the state over the matter in controversy. But when Congress exercised the power and lodged jurisdiction over it in the Interstate Commerce Commission, it took it out of the jurisdiction of the state, and the right of the state over the same subject matter was extinguished."

The court further says at page 778:

> "In the case of Missouri P. R. Co. v. Larrabee etc., the court recognized and sanctioned this doctrine, but found that there had been no action by Congress or the Interstate Commerce Commission and that therefore a state court may by mandamus compel a railroad company doing interstate business to afford equal local shipping service to its shippers, notwithstanding the cars in regard to which the service is claimed are eventually to be engaged in interstate commerce. From this it seems that if Congress had expressly lodged in the Interstate Commerce Commission the power and duty with regard to switching service, as it has with regard to requiring physical connection between rail and water transportation, the court would have held that the state was without authority to regulate the subject."

It cannot be that a state commission may order joint use of terminals—terminals used in

interstate commerce—and thus forestall and prevent the exercise of this power vested in the Interstate Commerce Commission.

The Language Used in the Transportation Act of 1920 Is Clear. No Reference May Be Had to Views of Individual Members of Congress nor to Committee Reports Where the Effect Would Be Only to Create Doubts, Which Do Not Now Exist.

In attempting to construe the Transportation Act as not conferring upon the Interstate Commerce Commission jurisdiction with respect to joint terminals, the petitioners brief at page 30 descends to a quotation from the Congressional Record, giving excerpts from the debate on the bill in the House of Representatives. Upon this point this court has expressed itself repeatedly to the effect that in construing an Act of Congress a court is not at liberty to recur to the views of individual members in debate.

Aldridge v. Williams, 3 How. 9;
U. S. v. U. P. R. Co., 91 U. S. 72;
District v. Washington, 108 U. S. 243;
Dunlap v. U. S., 173 U. S. 65;
Maxwell v. Dow, 176 U. S. 581,

and numerous other cases.

In Railroad Commission v. C. B. & Q. Railroad Company, 257 U. S. 563, this court in construing this very Transportation Act of 1920, said at page 243:

> "Great stress is put on the legislative history of the Transportation Act to show that the bill was not intended to confer on the commission power to remove any discrimination against interstate commerce involved in a general disparity between interstate and intrastate rates. Committee reports and explanatory statements of members in charge made in presenting a bill for passage have been held to be a legitimate aid to the interpretation of a statute which in its language is doubtful or obscure. (Citing cases.) But when taking the act as a whole the effect of the language used is clear to the court, extraneous aid like this cannot control the interpretation. (Citing cases.) Such aids are only admissible to solve doubt and not to create it."

Conclusion.

It is therefore submitted that the petition should be denied. That this conclusion is correct is recognized by the city of Los Angeles, one of the parties to this proceeding before the Railroad Commission and in the Supreme Court of the state of California, since it has already filed its petition with the Interstate Commerce Commission seeking an order such as it origin-

ally desired from the Railroad Commission of the state of California.

Respectfully submitted,

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In the Supreme Court
OF THE
United States

October Term, 1923

No. 283

Railroad Commission of the State of California,
Petitioner,

vs.

Southern Pacific Company (a corporation), Southern Pacific Railroad Company (a corporation),
Respondents.

CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

BRIEF FOR PETITIONER.

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1923

No. 283

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,
Petitioner,

vs.

SOUTHERN PACIFIC COMPANY (a corporation), SOUTHERN PACIFIC RAILROAD COMPANY (a corporation),
Respondents.

CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

BRIEF FOR PETITIONER.

There is involved in these proceedings the question of the validity of an order of the Railroad Commission of California directing three railroads (the Southern Pa-

cific, the Santa Fe and the Salt Lake) to join in the erection of a new union passenger depot and the elimination of certain grade crossings in the City of Los Angeles.

The facts in the case, together with a map showing the location of the three railroads in Los Angeles, the area within which a union depot was ordered to be erected, and also the location of the grade crossings proposed to be eliminated, are set forth in the petition for writ of certiorari and brief in support thereof on file in these proceedings. It is deemed unnecessary, therefore, to repeat at length the facts and circumstances out of which the case arose.

I.

THE PRIMARY ISSUE OF JURISDICTION.

The Railroad Commission based its order upon specific findings that public convenience and necessity requiring the erection of a union depot both as a means for more adequate railroad facilities and as a measure essential to the elimination of certain dangerous grade crossings. The Supreme Court of California, in a judicial review of the Commission's order, concluded that complete jurisdiction to determine the necessity for the erection of new railroad facilities was vested in the Interstate Commerce Commission by the provisions of the Transportation Act of 1920, and that the power of the Railroad Commission under the laws of California to make the order in question had been superseded by this assump-

tion of broader jurisdiction by the Interstate Commerce Commission.

The state court based this decision upon section 15a, section 5, section 1, subdivisions 18 to 22, inclusive, and section 3 of the Interstate Commerce Act as amended in 1920, holding that these particular sections had deprived the State Commission of the power it previously had to make the order under review. Each of these sections of the act is discussed and a complete argument on the question of jurisdiction is presented in petitioner's brief in support of the petition for writ of certiorari herein. An extended reargument upon this phase of the case is deemed unnecessary here.

Supplementing the points already presented and in order to show more clearly that the Commission's order did not contravene any of the sections of the Interstate Commerce Act relied upon by the state court, we desire to set forth in summary form an exact statement of what the order of the Railroad Commission does and does not do.

What the Commission's order requires:

1. The procurement jointly by the three carriers of grounds for a union depot within the area specified.

2. The filing of plans and specifications jointly by the three carriers for the construction of an adequate union passenger depot. (Provisions were made in the order as to apportionment of cost and time of construction.)

3. The actual construction of the depot in accordance with such plans.

4. The elimination of 17 specified grade crossings on the Southern Pacific line by the cessation of train operations longitudinally at grade along and upon a certain street (Alameda Street).

5. The elimination of 6 specified grade crossings on the Santa Fe and Salt Lake lines by the construction of viaducts.

The order does not require:

1. The construction or extension of any line of railroad.

2. The abandonment of any line of railroad.

3. The use by one railroad of the terminal facilities or main line and other trackage of another railroad.

4. The formulation of a plan for consolidated railroad systems.

5. The acquisition of facilities for the interchange of traffic.

6. The emergency utilization of cars or of terminal properties.

7. The regulation of car service.

The Commission's order is set forth in full on pages 146 to 150, inclusive of the transcript of record.

We respectfully submit that the Supreme Court of California erred in its interpretation of the Commission's order, and also, in the application and construction of the provisions of the Interstate Commerce Act.

II.

POINTS RAISED BY THE SUPPLEMENTAL RECORD.

It was originally intended that the issue of jurisdiction presented by the petition for certiorari and the transcript of record filed therewith should be the sole issue submitted in these proceedings. Attention has later been directed to certain decisions of this honorable court which have led counsel to conclude that it was proper to submit a supplemental stipulated record containing so much of the transcript of evidence presented to the court below as might be necessary for a complete consideration by the Supreme Court of all points in the case, involving the alleged denial of rights under the Federal Constitution even though these points were not passed upon by the court below.

Southern Railway Co. et al. v. Watts, 260 U. S. 192, 193;

Atlantic Coast Line R. Co. v. Daughton, (decided June 4, 1923) U. S. Supt. Ct. Adv. Op. 67 L. ed. No. 17, p. 681.

Greene v. Louisville & Interurban R. Co., 244 U. S. 499.

Appleby v. Buffalo, 221 U. S. 524, 529.

There has, therefore, been filed a supplemental record, consisting of selected portions of the transcript of testimony and certain important exhibits which counsel have stipulated shall constitute the entire record on review.

The following questions arising from facts set forth in this supplemental record were presented to the state court:

1. Was the Commission's finding that public convenience and necessity require the erection of a union depot consistent with, and supported by, the evidence?

2. Were the Commission's findings on questions of public convenience and necessity final and conclusive under the California law?

3. Has the Commission, under the police power of the state, authority to order the railroads to erect a union depot as an essential measure for the elimination of dangerous grade crossings?

4. Does the Commission's order, in requiring the construction and use of the new union depot and the abandonment of the present facilities deprive the railroads of property in violation of the guarantees under the Federal Constitution?

5. Does the Commission's requirement that the operation of trains on Alameda Street be eliminated after the construction of the union depot, impair the obligation of a contract contained in a certain franchise permitting the railroads to operate trains on Alameda Street?

6. Is the Commission's order invalid because it may require the railroads to expend large sums of money and to exercise the power of eminent domain in acquiring the necessary land and constructing a union depot?

These questions were not passed upon by the Supreme Court of California, the court holding that "this disposition of the primary inquiry" (the Federal question of jurisdiction) "renders unnecessary a discussion of the several subsidiary questions presented for our consideration by the briefs of counsel herein." Assuming that it

is proper to present for consideration all of the issues involved in the proceedings under review, we respectfully submit herewith the following argument upon these questions.

1. Was the Commission's finding that public convenience and necessity require the operation of a union depot consistent with, and supported by, the evidence?

The Commission's order was based upon four specific findings of fact:

(a) The Commission found that existing grade crossings (naming them) are unsafe, and that the continued use of these crossings, by the movement of trains by the respective carriers using such crossings, endangers the employees of the carriers and the public generally, and that public interest, safety, convenience and necessity require that such dangerous conditions be eliminated.

Included in the crossings enumerated by this finding are the 17 crossings of the Southern Pacific line on Alameda Street. The correctness of this finding of fact has never been disputed.

(b) The Commission found that the existing passenger station of the Santa Fe and Salt Lake railroads "are improper, inadequate and insufficient", and that the existing depot of the Southern Pacific Company "does not conform to the plan for the elimination of dangerous railroad crossings in the City of Los Angeles."

(c) The Commission found that in order to eliminate the dangerous grade crossings enumerated and to provide adequate and sufficient passenger station facilities for the three railroads in question "it is necessary and

the public safety, convenience and necessity require that a new structure or structures, to-wit: a union passenger station and buildings incidental thereto, be erected" by the respondent railroads, and that in connection therewith such improvements and changes in existing facilities of said railroads be made as might be reasonably necessary and incidental to the use of the union passenger station "and that all railroad traffic be eliminated from Alameda Street, between College Street and 15th Street, inclusive, in the City of Los Angeles, except local freight switching".

(d) The Commission found that public safety, convenience and necessity require that the location and site of the union passenger station referred to in the foregoing findings be within a designated area approximately one-half mile square within the City of Los Angeles.

This area is traversed by the main lines of two of the carriers, and is separated from the main line of the third carrier by a dry river bed less than 200 yards wide.

As shown by the supplemental transcript of record on file herein, the Commission's hearings and investigations preceding its findings involved a period of some four years. At its numerous hearings, in which many days' time was consumed, and printed transcripts of testimony of approximately 3000 pages compiled, the Commission heard evidence upon all questions involved in the above findings. In addition to the final report compiled by the

Commission's engineering department (Commission's Exhibit No. 1 filed herein with the supplemental record), plans were compiled and submitted by four engineers of prominence and unquestioned standing. These engineers also testified at the hearings, and excerpts from their testimony are contained in the supplemental transcript of record filed herein.

The questions involved in the above findings were largely questions requiring expert opinion. Four engineers, including the chief engineer of the Railroad Commission, testified definitely that a union depot was essential both for the proper elimination of grade crossings and for the convenience of the traveling public; that continued use of the present Southern Pacific depot was inconsistent with an adequate plan for the elimination of grade crossings; that the Santa Fe and Salt Lake depots were both inadequate and inconveniently located, and that the site of the union depot should be at or near the place finally selected and designated by the Commission. These engineers were Mr. Hawgood, Mr. Storrow, Mr. Barnard and the chief engineer of the Railroad Commission, Mr. Sachse. Mr. Hawgood's testimony will be found beginning on pages 316 and 353; Mr. Storrow's on pages 258 and 543; Mr. Barnard's on page 340, and Mr. Sachse's on pages 423 and 534 of the supplemental transcript of record. Also, the summary of this testimony and the various plans proposed are set forth in the report of the Commission's Engineering Department (Commission's Exhibit No. 1).

In addition to the evidence just referred to, the Commission made a complete inspection of the premises in

the presence of all of the parties and under the guidance of some of the engineers (including the respondents' engineers), who appeared as witnesses. The record of this inspection is also set forth in the supplemental transcript of record, beginning page 573. Such a view of the premises alone was sufficient to support the Commission's finding.

Boesche v. City of Naperville, (Ill.) 48 N. E. 1061;

Trustees of Schools of Lake Co. v. Griffith, 105 N. E. 760;

City of Tacoma v. Hansen, 110 Pac. 426;

Lewis Em. Dom., Vol. II, Sec. 776.

The necessity for the elimination of train operations on Alameda Street was recognized by the Southern Pacific and Salt Lake railroads, whose application for the establishment of a union depot at the present site of the Southern Pacific station was heard in connection with the proceedings resulting in the Commission's order. (Application No. 3346, Transcript of Record, p. 31, Supplemental Transcript, Appendix 544-572.) These two railroads urged the acceptance of their plan for the union depot instead of that finally adopted by the Commission. It was rejected, however, not only because it did not include the Santa Fe, but also because it afforded only a partial solution of the difficulties sought to be eliminated.

We respectfully submit that the supplemental record filed herein shows that the Commission's findings of fact, in all respects, were not inconsistent with, but on the contrary, were fully supported by, the evidence.

2. Were the Commission's findings on questions of public convenience and necessity final and conclusive under the California law?

The provision under the laws of California for judicial review of the Commission's orders is contained in California Statutes, 1915, Chapter 91 (The Public Utilities Act), section 67 of which reads as follows:

> "67. Within thirty days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the rendition of the decision on rehearing, the applicant may apply to the Supreme Court of his state for a writ of certiorari or review (hereinafter referred to as a writ of review) for the purpose of having the lawfulness of the original order or decision or the order or decision on rehearing inquired into and determined. Such writ shall be made returnable not later than thirty days after the date of the issuance thereof, and shall direct the commission to certify its record in the case to the court. On the return day, the cause shall be heard by the Supreme Court, unless for a good reason shown the same be continued. No new or additional evidence may be introduced in the Supreme Court, but the cause shall be heard on the record of the commission as certified to by it. The review shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the Constitution of the United States or of the State of California. The findings and conclusions of the commission on questions of fact shall be final and shall not be subject to review; such questions of fact shall include ultimate facts and the findings and conclusions of the commission on reasonableness and discrimination. The commission and each party to the action or proceeding before the commission shall have the right

> to appear in the review proceeding. Upon the hearing, the Supreme Court shall enter judgment either affirming or setting aside the order or decision of the commission. The provisions of the Code of Civil Procedure of this State relating to writs of review shall, so far as applicable and not in conflict with the provisions of this act, apply to proceedings instituted in the Supreme Court under the provisions of this section. No court of this state (except the Supreme Court to the extent herein specified) shall have jurisdiction to review, reverse, correct or annul any order or decisioin of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere with the commission in the performance of its official duties; *provided*, that the writ of mandamus shall lie from the Supreme Court to the commission in all proper cases."

It is to be noted that the above statute specifically provides that "the findings and conclusions of the Commission on questions of fact shall be final and not subject to review". In numerous decisions rendered both before and after the decision in the cases under review, the Supreme Court of California has recognized the force and validity of this provision as to the conclusiveness of the Commission's findings.

In the case of *Oro Electric Corp'n. v. Railroad Commission*, 169 Cal. 466, the California Supreme Court affirmed an order of the Railroad Commission denying the Oro Electric Corporation a certificate of public convenience and necessity to construct certain electric lines. Discussing the question of the Commission's finding of fact, and citing section 67 of the Public Utilities Act, the court said:

"Here the Commission found the ultimate fact that the public convenience and necessity did not require the exercise of the privileges in controversy, and neither the sufficiency of the evidence, nor the soundness of the reasoning, upon which that finding was based, can be considered in this proceeding."

Similar rulings were made in the following cases:

Clemmons v. Railroad Commission, 173 Cal. 254, 258;

Sexton v. Atchison, Topeka & Santa Fe Ry. Co., 173 Cal. 760;

San Leandro v. Railroad Commission, 183 Cal. 229, 239.

In the recent case of *Live Oak Water Users Assn. v. Railroad Commission*, Vol. 66 Cal. Dec. (Advance sheets) p. 408 (decided September 21, 1923), the Supreme Court of California again upheld the validity of section 67 of the Public Utilities Act, quoting in italics that portion of the statute, which provides that:

"The findings and conclusions of the Commission on questions of fact shall be final and shall not be subject to review."

In this case the California court supported its construction of section 67 of the Public Utilities Act by a reference to the decision of this honorable court and a quotation therefrom in the case of *Penn. R. R. Co. v. International Coal Mining Co.*, 230 U. S. 184, as follows:

"'Under the statute there are many acts of the carrier which are lawful or unlawful according as

> they are reasonable or unreasonable, just or unjust. The determination of such issues involves a comparison of rates with service, and calls for an exercise of the discretion of the administrative and rate-regulating body. For the reasonableness of rates, and the permissible discrimination based upon difference in conditions are not matters of law. So far as the determination depends upon facts, no jurisdiction to pass upon the administrative questions involved has been conferred upon the courts. That power has been vested in a single body, so as to secure uniformity and to prevent the varying and sometimes conflicting results that would flow from the different views of the same facts that might be taken by different tribunals.'"

It thus appears that section 67 and the decisions of the California Supreme Court construing it are consistent with the principles enunciated by this honorable court in the case of *New York & Queens Gas Co. v. McCall*, 245 U. S. 345, 347, 351,

> "The court of appeals of New York decided that the Public Service Commission was created to perform the important function of supervising and regulating the business of public service corporations; that the state law assumes that the experience of the members of the Commission especially fits them for dealing with the problems presented by the duties and activities of such corporations; that the courts, in reviewing the action of the Commission, have no authority to substitute their judgment as to what is reasonable in a given case for that of the Commission, but are limited to determining whether the action complained of was capricious or arbitrary and for this reason unlawful; and that it was clearly within the power of the Commission to make the order which is here assailed.

"This interpretation of the statutes of New York is conclusive, and the definition, thus announced, of the power of the courts of that state to review the decision of the Public Service Commission, based as it is in part on the decision in Interstate Commerce Commission v. Illinois C. R. Co., 215 U. S. 452, 470, 54 L. ed. 280, 287, 30 Sup. Ct. Rep. 155, differs but slightly, if at all, from the definition by this court of its own power to review the decisions of similar administrative bodies, arrived at in many cases in which such decisions have been under examination. Typical cases are: Baltimore & O. R. Co. v. United States, 215 U. S. 481-494, 54 L. ed. 292-297, 30 Sup. Ct. Rep. 164; Kansas City Southern R. Co. v. United States, 231 U. S. 423, 443, 444, 58 L. ed. 296, 304, 305, 52 L. R. A. (N. S.) 1, 34 Sup. Ct. Rep. 125; Railroad Commission v. Cumberland Teleph. & Teleg. Co., 212 U. S. 414, 420, 422, 53 L. ed. 577, 580, 581, 29 Sup. Ct. Rep. 357; Interstate Commerce Commission v. Union P. R. Co., 222 U. S. 541-547, 56 L. ed. 308-311, 32 Sup. Ct. Rep. 108; and Cedar Rapids Gaslight Co. v. Cedar Rapids, 223 U. S. 655, 668, 56 L. ed. 594, 604, 32 Sup. Ct. Rep. 389.

"It is the result of these and similar decisions, that while in such cases as we have here this Court is confined to the Federal question involved, and therefore has not the authority to substitute its judgment for that of an administrative commission as to the wisdom or policy of an order complained of, and will not analyze or balance the evidence which was before the Commission for the purpose of determining whether it preponderates for or against the conclusion arrived at, yet it will, nevertheless, enter upon such an examination of the record as may be necessary to determine whether the Federal constitutional right claimed has been denied; as, in this case, whether there was such a want of hearing or such arbitrary or capricious

> actions on the part of the Commission as to violate the due process clause of the Constitution.
>
> "* * * and we agree with the court of appeals of New York in concluding that the action of the Commission complained of was not arbitrary or capricious, but was based on very substantial evidence, and therefore that, even if the courts differed with the Commission as to the expediency or wisdom of the order, they are without authority to substitute for its judgment their views of what may be reasonable or wise."

However, notwithstanding section 67 of the Public Utilities Act and its own prior decisions, the California court in the particular cases under review failed to follow the undoubted principle of law above set forth. The state court while basing its decision primarily on the question of Federal jurisdiction above discussed, did, however, refer briefly to the Commission's findings in the following language:

> "The respondents also urge the contention that since this court has decided in the case of Civic Center Association v. Railroad Commission, *supra*, that the Railroad Commission of California had jurisdiction to make and enforce orders providing for the elimination of those certain grade crossings involved, in part, in the proceedings before the Railroad Commission; and since the said commission had found and held in said proceedings that the establishment of a union terminal depot was an indispensable element in accomplishing the elimination of said grade crossings, the commission had the power to include in its order for the elimination of such grade crossings, the creation of such union terminal depot. There is no merit in this contention, for the reason, very aptly set forth in the extract above quoted from the decision of the New York Court of Appeals in the case of

> People etc. v. Public Service Commission, *supra*. It is also without merit for the further reason that notwithstanding the views expressed by the Railroad Commission in its findings and conclusions in the proceeding herein presented for review, we can perceive no indispensable relation between the elimination of grade crossings and the establishment of union depot facilities, nor can we see any insurmountable difficulty why jurisdiction over the matter of eliminating grade crossings may not be exercised in a proper case consistently, and it may be concurrently, with the exercise of the authority which is vested by the Act of Congress of 1920 in the Interstate Commerce Commission over the subject of union terminal depot facilities."

Thus, the state court has apparently rendered a decision contrary to those previously rendered and contrary to the principle followed by this honorable court. In this respect, we respectfully submit, the Supreme Court of California has erred.

3. Has the Commission under the police power of the state authority to order the railroads to erect a union depot as an essential measure for the elimination of dangerous grade crossings?

The Commission found, as above set forth, that a union depot was an essential measure for the elimination of grade crossings.

The primary object of the present proceeding is the protection of the people from the hazardous railroad grade crossings now existing in Los Angeles. This can only be accomplished by virtue of the police power of the state. That power has not been, and without a constitutional amendment *cannot be taken away* by any

legislation which Congress could enact. It is inviolably reserved to the states.

Gibbons v. Ogden, 9 Wheat. 1, 203; 6 L. ed. 23, 72;
United States v. DeWitt, 9 Wall. 41; 19 L. ed. 593;
Slaughter House cases, 16 Wall. 36, 62; 21 L. ed. 394, 404;
Patterson v. Kentucky, 97 U. S. 501-503; 24 L. ed. 1115, 1116;
Hamilton v. Kentucky Distilleries & W. Co., 251 U. S. 146, 156;
Cooley Const. Lim., 574;
Hammer v. Dagenhart, 247 U. S. 251.

It is true that Congress has enacted laws requiring safety appliances, headlights, etc., on all trains used in interstate commerce. The purpose of these laws is primarily to protect travelers and employees *on trains*. They are enacted under the power to regulate commerce. But the power to *regulate commerce* has nothing to do with the power to protect the citizen who uses the street crossing but who may never ride on a train. The latter power can only be exercised by the state.

If it should be said that the power of the state to protect the public using the streets conflicts with the operations of interstate carriers which also used the streets, then it must be answered that as to such conflict *the power of the state is supreme*. This was the holding of the United States Supreme Court in the recent case of *Erie Railroad v. Board of Public Utility Commissioners*, 254 U. S. 394; 65 L. ed. 322. In that case the court said, relative to an order of a state

commission requiring a carrier engaged in interstate commerce to abolish grade crossings:

"But it is argued that the order is unreasonable in the circumstances to which we have adverted, the principle applied to the regulation of public service corporations being invoked. Mississippi R. Commission v. Mobile & O. R. Co., 244 U. S. 388, 391, 61 L. ed. 1216, 1219, 37 Sup. Ct. Rep. 602; Chicago, B. & Q. R. Co. v. Railroad Commission, 237 U. S. 220, 59 L. ed. 926, P. U. R. 1915 C, 309, 35 Sup. Ct. Rep. 560. But the extent of the states' power varies in different cases from absolute to qualified, somewhat as the privilege in respect of inflicting pecuniary damage varies. The power of the state over grade crossings derives little light from cases on the power to regulate trains.

"Grade crossings call for a necessary adjustment of two conflicting interests,—that of the public using the streets, and that of the railroads and the public using them. Generically the streets represent the more important interest of the two. There can be no doubt that they did when these railroads were laid out, or that the advent of automobiles has given them an additional claim to consideration. They always are the necessity of the whole public, which the railroads, vital as they are, hardly can be called to the same extent. Being places to which the public is invited, and that it necessarily frequents, the state, in the care of which this interest is, and from which, ultimately, the railroads derive their right to occupy the land, has a constitutional right to insist that they shall not be made dangerous to the public, whatever may be the cost to the parties introducing the danger. That is one of the most obvious cases of the police power: * * * neither prospective bankruptcy nor engagement in interstate commerce can take away this fundamental right of the sovereign of the

soil. Denver & R. G. R. Co. v. Denver, 250 U. S. 241, 246, 63 L. ed. 958, 962, 39 Sup. Ct. Rep. 450."

Upon this authority we think that jurisdiction of the California Commission to require the complete elimination by interstate carriers, of grade crossings in the City of Los Angeles is unassailable, even though, as the Commission found, it is necessary to require the carriers to erect a union station in order to accomplish such elimination.

4. Does the Commission's order, in requiring the construction and use of the new union depot and the abandonment of the present facilities deprive railroads of property in violation of the guarantees under the Federal Constitution?

It was urged by respondents that the order requires the carriers to abandon large areas of land and to "destroy and scrap" adequate facilities of great value without making any provision for reimbursing them for the loss.

The evidence shows and the Commission found that the depots of the Salt Lake and Santa Fe were inadequate as facilities for passenger service and that the Southern Pacific depot was inadequate in that it failed to conform to any reasonable plan for the elimination of grade crossings. The evidence also shows that the Southern Pacific station, though of modern type, is located on a narrow site with restricted approach tracks making it really inadequate as a passenger facility. Finally there is the ultimate finding of the Commission that public necessity requires a *union depot*.

An order requiring the construction of a union depot necessarily carries with it the requirement that existing facilities be abandoned. If there is any public necessity for the union station then the abandonment of existing facilities is justified and there is no unconstitutional taking. Nearly every union depot case found in the reports has involved the abandonment of existing facilities, sometimes adequate and sometimes inadequate.

In the case of *Railroad Commission v. No. Ala. Ry.*, 62 So. 749-752, the railroads made the same objection, i. e. that requiring them to abandon existing facilities would be a taking of private property for public use without compensation.

The Supreme Court of Alabama said:

> "So long as the Commission acts within the rule above stated (referring to a matter not here involved), its orders in exercising the police power of the state is not violative of the state or federal constitutions as to condemning property without due process notwithstanding the railroad may lose the use of the old building or the use of the lot as a location for its passenger depot. It acquired the lot and erected the building with a full knowledge of and subject to the police power of the state."

In the case of *Railroad Commission v. Ala. Gt. So. Ry.*, 64 So. 13, a similar contention was made. We quote:

> "It is also contended by the railroad companies that the order of the Railroad Commission is void in that the order of the Railroad Commission requires each railroad company to abandon presently

> occupied depot facilities in the City of Bessemer, and to build, in conjunction with others, a union depot, whereas, the act authorizing the Railroad Commission to require the construction of a union depot does not authorize the Commission to compel the abandonment of depot and depot facilities, already erected and in use."

The order was nevertheless upheld as being "out of respect to public needs" and therefore "violative of no principle of constitutional law" (p. 16). And also on the ground that, "If the state has the power to which we have referred (the authority to require all railroad companies operating railroads within a city to use a union passenger station at that point), then it has the corresponding power to put that power into exercise" (p. 18). The "corresponding power" referred to includes the power to require the abandonment of existing depots.

The Supreme Court of Texas in *State v. St. L. & So. W. Ry.*, 165 S. W. 491-8, a union depot case, held as follows:

> "The statute explicitly grants the commission the power to require railroads to erect union depots, and this carries with it, by necessary implication, every power necessary to the accomplishment of such object."

To the same effect is the case of

Dewey v. At. Coast Line Ry., 55 S. E. 292; 142 N. C. 392.

In the case of *Gulf O. & S. F. Ry. Co. v. State*, 167 S. W. 192, a union depot case, the findings were that one of the railroads,

> "owns and operates a depot * * * which depot is old and inadequate for the reasonable needs of said place; said *depot is situated so as to be reasonably convenient and accessible* to the citizens having occasion to use the same"

and that the other railroad depot

> "is reasonably convenient and accessible to the people of Celeste."

It was also found that a

> "union depot, if constructed at the junction of the two roads, would be reasonably convenient and accessible to the people of Celeste."

Under these findings the Supreme Court of Texas upheld the order requiring the erection of the union depot and the abandonment of existing depots *one of which was adequate.*

To the same effect see *Mayor etc. of Worcester v. Norwich etc. Ry.*, 109 Mass. 103.

Respondents may urge that the present Southern Pacific depot was built under an express order of the Railroad Commission. The decision of the Commission in 3 C. R. C. 927, shows that the Southern Pacific *applied for permission* to build this depot and this permission was granted upon the express condition that "the approval of the Commission therefor, shall never be used as a defense against the separation of grade crossings in the State of California." When the Southern Pacific built this depot it knew, or must be presumed to have known, that it might be required to participate in the building of a union station at any time. The evidence shows that at least since 1911

there has been agitation in Los Angeles for a union depot at the site ordered by the Commission.

5. Does the Commission's requirement that the operation of trains on Alameda Street be eliminated after the construction of the union depot impair the obligation of a contract contained in a certain franchise permitting the railroads to operate trains on Alameda Street?

The record fails to disclose the exact terms of any franchise claimed by the Southern Pacific Company for the occupancy of Alameda Street. No such franchise was introduced in evidence. The report of Commission's engineering department (Commission's Exhibit 1) does however set forth what purports to be such a franchise and we may assume, as was done in the case of *Denver & Rio Grande v. Denver*, 250 U. S. 242, that the railroad is the holder of such franchise as the City of Los Angeles was authorized to grant.

It is not claimed and no claim could be made that a franchise was ever granted directly to the Southern Pacific by a special act of the legislature.

Railroad corporations obtain their franchises to exist as corporations directly from the state under the general provisions of the Civil Code of California applicable to all corporations. (Civil Code, sections 283-299.) Of these sections, sections 291-295 inclusive pertain to the incorporation of railroads. The entire subject of the corporate franchises of railroad corporations is embraced within the aforementioned sections. The franchise or authority to construct railroads upon streets and highways within the State of California is specifically granted to railroad corpora-

tions by Civil Code section 465, subdivision 5, which provides as follows:

> "Section 465. * * * Every railroad corporation has power:
>
> 5. To construct their roads across, along or upon any stream of water, watercourse, roadstead, bay, navigable stream, street, avenue or highway, or across any railway, canal, ditch or flume which the route of its road intersects, crosses or runs along, in such manner as to afford security for life and property; but the corporation shall restore the stream or watercourse, road, street, avenue, highway, railroad, canal, ditch, or flume thus intersected to its former state of usefulness as near as may be, or so that the railroad shall not unnecessarily impair its usefulness or injure its franchise."

Any franchise to use the streets of the City of Los Angeles held by the Southern Pacific Company must have been acquired by virtue of this code section. But in addition to this franchise from the state, the Civil Code, section 470, requires that a railroad must obtain the consent of the governing body of an incorporated city before it can use or occupy any street therein. Section 470, Civil Code, reads as follows:

> "Section 470. No railroad corporation must use any street, alley, or highway, or any of the land or water, within any incorporated city or town, unless the right to so use the same is granted by a two-third vote of the town or city authority from which the right must emanate."

It has been held by the Supreme Court of California that a railroad can acquire no greater rights in the streets of the City of Los Angeles than the city has the

power to grant under the specific provisions of subdivision 5, section 465, Civil Code, as modified by section 470, Civil Code. In the case of *Los Angeles v. Southern Pacific Railroad Co.*, 157 Cal. 363-8, referring to these two code sections, the court said:

> "Section 470 of the Civil Code * * * is simply a limitation upon such authorization, (referring to subd. 5, sec. 465) making such a grant by the town or city authority a condition precedent to the exercise of the power given by the legislature so far as streets in incorporated cities or towns are concerned."

To the same effect, see *Simons Brick Co. v. City of Los Angeles*, 182 Cal. 230-5.

A distinction may here be drawn between a franchise in the true sense and a mere permit to occupy a particular street. Having built its railroads and engaged in the business of a common carrier of persons and property the Southern Pacific Company became the recipient of such franchise rights as the state granted under the statutes above referred to. But the determination by the City of Los Angeles of the particular streets which the railroad thus enfranchised by the state should occupy, involved no additional grant of franchise, in the true sense of the word. The only jurisdiction exercised by the city was the local police power of determining how its streets should be used by the common carrier, consistently with public convenience and safety. This distinction between a franchise in the true sense and the mere permit for the occupancy of city streets was recognized in the Su-

preme Court of California in the case of *Oro Electric Corp. v. Railroad Commission*, 169 Cal. 466-476, where it was held that the City of Stockton had no power to grant franchises to carry on the business of selling electricity to the inhabitants, but did have

> "at most, the limited power above mentioned, i. e. nothing more than the power to grant to electric corporations, the right to use its streets".

We think the same situation exists here. The Southern Pacific acquired its franchise to carry on its business as a common carrier and to operate on all highways both within and without cities, directly from the state. It can have nothing more than a permit to use the city streets of the City of Los Angeles. Such a permit is granted under the police power and the same power may modify it for the protection of the people from danger. Such change does not impair or affect the company's *franchise* to operate into Los Angeles. It simply requires it to operate into Los Angeles in a safe manner. Such a permit to use the streets is subject to the police power and must be exercised under the conditions set forth in sec. 465, sub. 5, of the California Civil Code. It is there provided that railroad corporations may construct their roads along or upon any street or highway "*in such manner as to afford security for life and property*". We submit that this is an essential and continuing condition which the railroad company must fulfil if it is to maintain its right to the use of the street. The Commission found and the Southern Pacific Company has admitted that

its road is not so constructed along Alameda Street as to afford security for life and property.

We respectfully submit that the right to the use of Alameda Street claimed by the Southern Pacific is a strictly limited one, as described by the above statute, and that it is not in the true sense a franchise. It is a permit, which, though not revocable at will, is necessarily subject to modification or even complete revocation whenever the necessities of the public require it. The city could not alienate its police power to protect its citizens from dangerous conditions arising in a public street.

We think the case of *Denver & Rio Grande R. Co. v. Denver*, 250 U. S. 242; 63 L. ed. 961, is squarely in point on this proposition and goes much further than it is necessary to go in the present case.

In that case an ordinance was enacted directing the *removal* of a railroad track from the intersection of two streets in Denver. In the present case the tracks have not been ordered to be removed, but are to be retained for freight switching.

Answering objections similar to those made in this case, this court there said:

> "The track in Wynkoop street has been there since 1871, and we shall assume, as did the supreme court of the state, that it was put there in virtue of some ordinance of that period, and that the ordinance became a contract and the right granted became a vested property right. But, as this court often has held, such contracts and rights are held subject to the fair exercise by the state,

or the municipality as its agent, of the power to adopt and enforce such regulations as are reasonably necessary to secure the public safety; for this power 'is inalienable even by express grant', and its legitimate exertion contravenes neither the contract clause of the Constitution nor the due process clause of the 14th Amendment. Atlantic Coast Line R. Co. v. Goldsboro, 232 U. S. 548, 558, 58 L. ed. 721, 726, 34 Sup. Ct. Rep. 364; Chicago and A. R. Co. v. Tranbarger, 238 U. S. 67, 76, 59 L. ed. 1204, 1210, 35 Sup. Ct. Rep. 678. * * *"

"The scope of the power and instances of its application are shown in the decisions sustaining regulations (a) requiring railroad companies at their own expense to abrogate grade crossings by elevating or depressing their tracks and putting in bridges or viaducts at public crossings (Northern P. R. Co. v. Duluth, 208 U. S. 583, 52 L. ed. 630, 28 Sup. Ct. Rep. 341; Chicago, M. & St. P. R. Co. v. Minneapolis, 232 U. S. 430, 58 L. ed. 671, 34 Sup. Ct. Rep. 400; Missouri P. R. Co. v. Omaha, 235 U. S. 121, 59 L. ed. 157, 35 Sup. Ct. Rep. 82), (b) requiring a railroad company at its own cost to change the location of a track and also to elevate it as a means of making travel on a highway safe. (New York and N. E. R. Co. v. Bristol, 151 U. S. 556, 38 L. ed. 269, 14 Sup. Ct. Rep. 437), (c) prohibiting a railroad company from laying more than a single track, in a narrow, busy street, although its franchise authorized it to lay a double track there (Baltimore v. Baltimore Trust & G. Co., 166 U. S. 673, 41 L. ed. 1160, 17 Sup. Ct. Rep. 696), and (d) requiring a gas company whose mains and pipes were laid beneath the surface of a street under an existing franchise to shift them to another location at its own cost to make room for a public drainage system (New Orleans Gaslight Co. v. Drainage Commission, 197 U. S. 453, 49 L. ed. 831, 25 Sup. Ct. Rep. 471)."

The court after discussing the reasonableness of the order holds:

> "The situation is unusual and the ordinance deals with it in a rather practical way. Giving effect to all that appears, we are unable to say that what is required is plainly unreasonable and arbitrary."

The limitation on the power of the city to alienate or restrict the exercise of the state's sovereign power of regulation is fully defined in *Home Telephone and Telegraph Co. v. City of Los Angeles*, 211 U. S. 265; 53 L. ed. 176.

6. Is the Commission's order invalid because it may require the railroads to expend large sums of money and to exercise the power of eminent domain in acquiring the necessary land and constructing a union depot?

It was urged by respondents that the order of the Commission invaded their rights under the Federal Constitution because the effect of the order was to require them to expend large sums of money and to acquire new property. It is true that the Commission's order directed respondents to procure grounds for a union depot within a specified area. To acquire the necessary property, construct a union depot and to eliminate the grade crossings as ordered will, of course, require the expenditure of considerable money. That a public utility may be required to expend money for such purposes and, if necessary, to exercise the power of eminent domain in order to perform its public utility

functions has been held, however, in the following cases:

Erie Railroad v. Board of Public Utility Commissioners, Adv. Ops. Feb. 1, 1921, No. 6, pp. 199-201;

Wisconsin M. & P. R. Co. v. Jacobson, 179 U. S. 287; 45 L. ed. 194-201, quoted with approval in *Pac. T. & T. Co. v. Eshleman*, 166 Cal. 672;

Mulke v. N. Y. & Harlem R. Co., 197 U. S. 544; 49 L. ed. 872;

Atlantic Coast Line R. Co. v. N. Carolina Corp. Com., 206 U. S. 1; 51 L. ed. 933, 945;

Mobile etc. Ry. Co. v. Mississippi, 210 U. S. 187; 52 L. ed. 1016-1024;

Grand Trunk R. Co. v. Michigan R. R. Com., 231 U. S. 470; 58 L. ed. 318;

Ala. Great So. Ry. v. R. R. Com. of Ala., 64 So. 13; 185 Ala. 354;

Lukrawka v. Spring Valley W. Co., 169 Cal. 318-333.

It was claimed that the order here under review requires the expenditure of an excessively large sum of money. Not having filed plans as directed by the Commission, it is impossible for respondents or anyone else to say what it will cost to comply with the Commission's order. That the present conditions in Los Angeles justify very extensive and costly changes is, however, clearly indicated both by the estimates of engineer witnesses and by the application filed by the Southern Pacific and Salt Lake companies in which

they sought in another way, whether less costly or not cannot yet be determined, to accomplish some of the changes and improvements directed by the Commission's order.

We respectfully submit that the decision of the Supreme Court of California here under review should be reversed.

Dated, San Francisco,
October 13, 1923.

Respectfully submitted,
HUGH GORDON,
WILLIAM W. CLARY,
Attorneys for Petitioner.

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In the Supreme Court

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United States

October Term, 1923

No. 283

Office Supreme Court, U. S.
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WM. R. STANSBURY
Clerk

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,
Petitioner,

vs.

SOUTHERN PACIFIC COMPANY, a corporation, and SOUTHERN PACIFIC RAILROAD COMPANY, a corporation,
Respondents.

Certiorari to the Supreme Court of the State of California

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In the Supreme Court

OF THE

United States

October Term, 1923

No. 283

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,
Petitioner,

vs.

SOUTHERN PACIFIC COMPANY, a corporation, and SOUTHERN PACIFIC RAILROAD COMPANY, a corporation,
Respondents.

Certiorari to the Supreme Court of the State of California

BRIEF FOR RESPONDENTS, SOUTHERN PACIFIC COMPANY AND SOUTHERN PACIFIC RAILROAD COMPANY

STATEMENT OF THE CASE

Writs of certiorari have been granted upon the petition of the Railroad Commission of the State of California, directed to the Supreme Court of that State, to review a decision rendered by the Supreme Court of the State of California, wherein the state court annulled orders entered by the Rail-

road Commission of the State of California requi
ing the Atchison, Topeka & Santa Fe Railway Com
pany, Los Angeles & Salt Lake Railroad Company
Southern Pacific Company, and Southern Pacifi
Railroad Company to "make and construct * *
additions, *extensions*,* improvements to, and changes
in, their railroad facilities in the City of Los An
geles, and to erect a union passenger station and
buildings incidental thereto in said City of Los
Angeles" at a designated site remote from the
existing passenger stations of respondents; "and
perform such work and make and construct the
necessary fills, cuts, viaducts and other works and
structures necessary for a separation of grades
at" certain specified crossings. (Original Order,
Tr. 104, 105).

The Commission's orders further provided that
Southern Pacific Company should "eliminate all
main line traffic from Alameda Street" for a dis-
tance of about three miles, over which thirty-nine
trains carrying interstate passengers are operated
each twenty-four hours.

The Commission's orders will require the Atchi-
son, Topeka & Santa Fe Railway Company, the
Los Angeles & Salt Lake Railroad Company, South-
ern Pacific Company, and Southern Pacific Rail-
road Company, to *abandon* their existing passenger

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* (Italics are ours unless otherwise noted.)

(We will refer to petitioner's brief filed in support of the petition for writ as "Brief for Petitioner" and to the second brief filed as "Supplemental Brief.")

station facilities in the City of Los Angeles, including the modern passenger station of the Southern Pacific Company, erected in 1915 under plans and specifications approved by the California Railroad Commission by formal order, although the uncontradicted evidence shows that the existing passenger terminal facilities of the Southern Pacific Company are adequate to accommodate all passenger traffic of the three steam lines for at least a period of twenty years and that properties owned by the Santa Fe "offer a suitable location for a union passenger terminal" and the Los Angeles & Salt Lake Railroad Company owns ample property to provide all necessary facilities in handling their passenger traffic.

As is stated by counsel for petitioners in their petition for writ of certiorari, "the relief asked by the various complaints (before the Commission) *included a general investigation of the whole railroad and terminal situation*" (pp. 3, 4).

The orders require the carriers to "proceed to the procurement of sufficient ground within the boundaries hereinafter set out, and proceed with the construction of an adequate union passenger station thereon and buildings incidental thereto in the City of Los Angeles, and to make such *additions to, extensions of,* improvements and changes in the existing railroad facilities of said companies as may be reasonable, necessary and incidental to the use of said union passenger station." (Tr. 146.)

It is conceded by counsel for petitioners in their brief (pp. 17 and 18) that in order to carry the Commission's orders into effect the carriers would be obliged to make *extensions of their main lines* to reach the proposed site of the union depot or to effect some arrangement for the *joint use of tracks* and that "the erection of a new union depot and the elimination of grade crossings will require a rearrangement of traffic. Some new track may have to be laid and some old track abandoned." (Petitioner's Brief p. 21.)

To carry the Commission's orders into effect the carriers would be required to expend a sum estimated as low as $25,396,633 and as high as $45,092,104. (Tr. 94.)

REVIEW BY STATE SUPREME COURT

The Commission's orders becoming final, each of the carriers thereupon filed in the Supreme Court of the State of California a petition for writ of review in conformity with the provisions of Section 67 of the Public Utilities Act of the State of California (Tr. 169, 185, 190), alleging that the lines of railroad owned and operated by it formed a component, integral and essential part of an interstate system of steam railroads and are operated as a unit as an interstate system for the transportation of freight and passengers in interstate and intrastate commerce, and drawing in question the validity of the California statute upon

which the Railroad Commission had predicated their orders and the authority exercised under these statutes upon the ground that the state statute and the authority sought to be exercised was repugnant to the Constitution and laws of the United States.

The grounds upon which these petitions were rested, briefly stated, are:

That the decisions and orders of the Railroad Commission of the State of California are beyond the power and jurisdiction of that Commission and are in contravention of and repugnant to Section 8 of Article I of the Constitution of the United States; and of Subdivision 15 of Section 1 of the Act of the Congress of the United States generally known as the Interstate Commerce Act, approved February 4, 1887, as amended; and of Subdivisions 18 to 22, inclusive, of the same section; and of Subdivision 4 of Section 3 of said Act as amended; and of Subdivision 4 of Section 5 of said act as amended; and of Subdivisions 2 and 3 of Section 15-A of said Act, as amended, which section was added to said Act by the Transportation Act of 1920; and of Subdivision 2 of Section 20-A of said Interstate Commerce Act, as amended, and particularly as amended by said Transportation Act.

That the Railroad Commission of the State of California has no jurisdiction to require the respondents to comply with said orders for the

reason that the necessary force and effect of such orders is to require the joint use of terminal facilities owned by the several carriers which are used by them in the conduct of their business by one or more of the other carriers, and to require the joint use of main track or tracks of each of the carriers for a distance outside of its terminal, both by the owner and one or more of the other carriers, whereas at the time the Commission's orders and decisions were rendered power and authority to require the use of terminal facilities, including main line track or tracks for a reasonable distance outside the terminals, by any other carrier or carriers, was vested solely in the Interstate Commerce Commission by the provisions of Paragraph 4 of Section 3, and Paragraph 15 of Section 1 of the Interstate Commerce Act, as amended in 1920.

That the California Railroad Commission has no jurisdiction to require the Respondents to comply with the provisions of the orders for the reason that the necessary force and effect of the orders so entered is to require each of the carriers to undertake the abandonment and extension of its lines of railroad and the construction of a new line of railroad and facilities, and the operation thereof under said extensions, and the joint use of such extensions and new line by each of the carriers and the other carriers involved in the order, whereas at the time said decisions and orders were entered no such extension

of lines or construction of new line could be undertaken by the carriers until there had been obtained from the Interstate Commerce Commission a certificate under the provisions of paragraphs 18 to 22, inclusive, of Section 1 of the Interstate Commerce Act, as amended, permitting the carriers to make such extension, and that the orders of the California Commission, therefore, invade the authority and jurisdiction of the Interstate Commerce Commission and are in contravention of and repugnant to Section 8 of Article I of the Constitution of the United States.

That the Railroad Commission of the State of California had no jurisdiction or power to make or enter its orders because, in order to comply therewith, the carriers are required to make expenditures of great and unreasonable sums out of proportion to any benefits to be derived therefrom by the carriers or their passengers, or the public generally, and the necessary effect of the orders will be to require each of the carriers to expend sums which could only be obtained by the issuance of securities under the authority and supervision of the Interstate Commerce Commission as provided by Section 20-A of the Interstate Commerce Act, and that, therefore, the power sought to be exercised by the State Commission is in contravention of the Interstate Commerce Act and Section 8 of Article I of the Constitution of the United States.

That the Commission's decisions and orders are in contravention of and repugnant to the provisions of Section 1 of the Fourteenth Amendment of the Constitution of the United States for the reason that the necessary effect of said orders is to require the railroads to share the use of the passenger terminal facilities owned and operated by them respectively in the City of Los Angeles, together with their main track or tracks for a reasonable distance beyond their terminals, with the other carriers named in the decisions and orders, without compensation for the damages which the railroads will necessarily sustain.

That the Commission's decisions and orders were in contravention of and repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States by reason of the fact that respondents were by said decisions and orders denied the equal protection of the laws and deprived of their property without due process of law for the reason that no evidence was introduced before said Commission to the effect that the passenger terminal facilities owned and operated by carriers respectively in the City of Los Angeles are inadequate to meet the public convenience and necessity.

That the Commission's decisions and orders are repugnant to the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States by reason of the fact that the uncontradicted evidence introduced before said Com-

mission shows that the present facilities and passenger station of Southern Pacific Company and Southern Pacific Railroad Company are adequate to accommodate all passenger traffic of respondents within said City of Los Angeles and in addition thereto to accommodate all the passenger traffic of the other steam line carriers named in said decisions and orders, not only at the present time, but for at least a period of twenty years from the present time, and, therefore, public convenience, necessity and safety do not require these companies to abandon the passenger facilities owned and operated by them, and join the other carriers named in said decisions and orders in the expense of constructing a union passenger station and buildings incidental thereto at the site specified by said Commission in its said decisions and orders.

The Southern Pacific Company and Southern Pacific Railroad Company also contended that the Commission's decisions and orders are in contravention of and repugnant to the provisions of Section 10 of Article I of the Constitution of the United States and of the Fourteenth Amendment to the Constitution of the United States by reason of the fact that these decisions and orders will, if made effective, impair the contract made between the State of California and Southern Pacific Railroad Company, and the contract made and entered into between the City of Los Angeles and petitioner Southern Pacific Railroad Company,

granting a franchise authorizing the construction and operation of its railroad on and along Alameda Street in the City of Los Angeles.

DECISION OF THE SUPREME COURT OF THE STATE OF CALIFORNIA

The state court by unanimous opinion sustained the constitutional rights asserted by the carriers and decided in their favor upon the sole ground that the state statute was repugnant to the Federal statute, and concluded "that full power and authority over the matter of union terminal depot facilities of the railroads who are largely engaged in interstate commerce, and who are the petitioners herein, has been vested in the Interstate Commerce Commission under the terms of said amendatory act of 1920, and that by virtue thereof the Railroad Commission of California, one of the respondents herein, has been divested of the power, authority and jurisdiction over that subject, sought by it to be exercised in the several proceedings before it and by the order presented for review herein." (Tr. 233.)

The state court further held that the question decided by it made it unnecessary to decide the other questions raised by the carriers in their petitions for writ of review, all of which were separable and related to the denial of rights in violation of the Federal Constitution.

The three petitions for writs of certiorari filed in this court relate solely to the question of the respective jurisdiction of the Federal and State Commissions. (Petitions, pp. 8, 9.)

Consolidation of Cases

In view of the fact that the several proceedings before the Railroad Commission, including the application made by the carriers and the order for a general investigation, were consolidated by an order of the Commission and treated as one proceeding, and, as was stated by counsel for petitioners, "the three proceedings (instituted in the state court) raised almost identical questions and could be treated by the State Supreme Court as one case" and for the purpose of economizing time and effort the respondents in the three cases pending before this court will file in each case an identical brief.

ARGUMENT.

SCOPE OF REVIEW BY THIS COURT

Counsel for petitioner have set forth in their brief at page 5 that it has been deemed proper to submit a supplemental stipulated record containing such transcript of evidence as is necessary to enable this court to determine all the points raised by respondents in their petitions for writs of review addressed to the state court. Counsel for all parties have joined in stipulating the supplemental transcript and exhibits into the record filed in this court in order that this court may determine all points raised in the Supreme Court of the state in the event this court concludes to decide these questions.

Counsel for respondents will later undertake to reply to the arguments relating to these other points which have been argued by counsel for petitioner in their brief, but nevertheless we hold it our duty to respectfully suggest the reasons why this court in these proceedings should not undertake to review any question other than that decided by the state court.

We were at first inclined to accept the conclusions which counsel for petitioner reached by relying upon the cases cited at page 5 of their brief but examination of these cases discloses that in the first three cases cited (*Southern Railway Company et al. v. Watts; Atlantic Coast Line R. R. v. Daughton; Greene v. L. & I. R. Co.*) the Supreme

Court of the United States was reviewing decisions rendered by inferior Federal courts and that the last case cited by petitioner's counsel (*Appleby v. Buffalo*) is not apposite as the case is authority only for the rule that "the right of this court to review the judgment of the highest court of the state is specifically limited by Section 709, Revised Statutes, and in cases such as this depends upon an alleged denial of a Federal right which the record shows was specifically set up and claimed in and denied by the state court, or that such was the necessary effect of the judgment."

A diligent examination of the authorities has failed to disclose any case similar to the case at bar. In practically all cases where this question has been raised it appears that there was a Federal question upon which the jurisdiction of this court was invoked and also questions relating to local or state law, whereas in the case at bar the respondents petitioned the state court for a writ of review of the Commission's orders upon several grounds, drawing in question the validity of the California statute and the authority exercised by that state through its Railroad Commission on the ground of their being repugnant to the Constitution and laws of the United States. (Paragraphs 9, 10, 11, 12, 13, 14, 15, petition for writ of review of Southern Pacific Company and Southern Pacific Railroad Company (Tr. 176-182);

paragraph 2, petition for writ of review of the Atchison, Topeka & Santa Fe Railway Company (Tr. 186); paragraph 3, petition of Los Angeles & Salt Lake Railroad Company (Tr. 192).)

The State Supreme Court rested its decision and judgment in each of respondents' petitions upon the relative and respective jurisdictions of the Interstate Commerce Commission and the Railroad Commission of the State of California (Tr. 233). The State Court further held that the disposition of the question decided rendered unnecessary a discussion of the other questions which had been raised by the respondents in the petitions filed in the State Court. (Tr. 233-4.)

The petitions for writs of certiorari filed in the instant cases are addressed entirely to a review of the one question decided by the State Supreme Court and the original brief filed in support of the petition for the writ of certiorari relates exclusively to this one question.

The question whether all the grounds relied upon by the respondents in their petitions for review filed in the State Court should be reviewed by this Court in this proceeding would be easy of solution in the event all other grounds urged upon the State Court for writs of review had related to local or state law for the reason that this question is set at rest by a long line of harmonious decisions ren-

dered by this Court under the Acts of 1789 and 1867 and Section 237 of the Judicial Code.

But the facts in these cases are peculiar in that all the grounds upon which the carriers relied in seeking writs of review from the State Court were, as is shown by the petitions for writs of review, of a Federal nature.

We have reached the conclusion that the authorities hereinafter cited sustain the rule that on a hearing of a writ of certiorari or a writ of error addressed to "the highest court of the state" under the provisions of Section 237 of the Judicial Code this Court, in considering the questions presented, will confine itself to a consideration only of such *Federal* questions as have been *decided* by the highest court of the State.

> *Murdock v. City of Memphis*, 20 Wall. 590 (87 U. S.).

See also *Railroad Co. v. Maryland*, 20 Wall. 643, 645.

The two cases last cited, as well as many cases hereinafter cited, were, it is true, made under the provisions of the Federal Judiciary Act which has been superseded by Section 237 of the Judicial Code, but they are nevertheless applicable in view of the similarity of the provisions of the statutes then and now in force.

"The jurisdiction of this court to review the proceedings of the state courts, as we have had frequent occasion to declare, is not that of a general reviewing court in error, but is limited to the specific instances of *denials* of Federal rights, whether those pertaining to the constitutionality of Federal or State statutes, or to certain rights, immunities and privileges of Federal origin, specially set up in the State Court and *denied* by the rulings and judgment of that court. * * *"

Waters-Pierce Oil Co. v. Texas, 212 U. S. 86, 97.

St. Louis, etc., v. Taylor, 210 U. S. 267.

Seaboard Air Line Ry. v. Duvall, 225 U. S. 477, 487.

Keokuk & Hamilton Bridge Co. v. Illinois, 175 U. S. 633-4.

Harding v. Illinois, 196 U. S. 78, 85-6.

Eustis v. Bolles, 150 U. S. 361, 366.

In support of our contention that this Court will confine its attention only in its examination of the questions arising in connection with the writ of certiorari to the points or questions covered by the petitioner's assignment of errors as to which review is prayed, we direct the Court's attention to the case of *Alice State Bank v. Houston Passenger Company*, 247 U. S. 240, which was a case of certiorari to the Federal Circuit Court of Appeals. It was there held:

"Upon a review by certiorari, the court confines its discussion to the matter relied on in procuring the writ."

At page 242, when referring to a contention which might have been made for a reversal of the judgment, the Court said:

> "But as that is not the ground upon which the writ of certiorari was asked or granted, we confine our discussion to the matter relied upon in asking the intervention of this Court," citing *Hubbard v. Tod*, 171 U. S. 474, 494.

We can conceive of no reason why the rules announced in these cases are not equally applicable in a case where writs of error or certiorari have been directed to a State court.

It appears from the foregoing authorities that where this court has only determined the question decided by the State Court it has remanded the case to the State Court where reversal is ordered, with instructions to the State Court for further proceedings not inconsistent with the opinion of this court.

Kinzell v. C. M. & St. P. Ry. Co., 250 U. S. 130.

Coe v. Armour Fertilizer Works, 237 U. S. 413.

Upon cases being so remanded by this Court to the highest courts of the States, the State Courts will proceed to determine the questions which were not originally adjudicated by them.

Kinzell v. C. M. & St. P. Ry. Co., 190 Pac. 255.

Ettor v. City of Tacoma, 77 Wash. 267, 137 Pac. 120.

Gibson v. Chouteau, 50 Mo. 85.

Goodtitle v. Kibbe, 1 Ala. 403.

Simonson v. Monson, 36 S. D. 245, 153 N. W. 1020.

Harding v. Harding, 148 Cal. 397.

The authorities cited warrant the conclusion that any Federal questions raised in the State Supreme Court by the petitions for writ of review which were not considered and decided by the State Court are not open to consideration in these proceedings.

However, in view of our inability to find a case exactly in point, we will, after presenting an argument in support of the correctness of the State Court's decision, through caution present a brief argument in support of the other questions presented to the Supreme Court of the State of California and which were not decided by it, so that in the event this Court concludes that it is incumbent upon it to decide these questions the Court will be fully advised as to the respondents' contentions.

THE ORDERS OF THE STATE COMMISSION ARE VOID BECAUSE THEY CONFLICT WITH THE POWERS CONFERRED UPON THE INTERSTATE COMMERCE COMMISSION BY THE TRANSPORTATION ACT OF 1920.

The proceedings were begun before the California Commission and the Southern Pacific and Salt Lake lines applied to that Commission to consolidate their terminal facilities and the California Commission entered upon a general investigation of the entire terminal situation at Los Angeles upon its own motion long before the passage of the Transportation Act of 1920. After the passage of that act the respondents formally questioned the jurisdiction of the State Commission in the proceedings before that body.

In the petitions for writs of review filed in the Supreme Court of the State of California there was drawn in question the validity of the California statute and the authority sought to be exercised thereunder by the State Commission, upon the ground that by reason of these amendments to the Interstate Commerce Act the validity of the California statute and the authority sought to be exercised thereunder by the Commission were in contravention of and repugnant to the Act to Regulate Commerce and to Section 8 of Article I of the Constitution of the United States (Tr. 180, 181, 187, 188, 192,

193), and it was held by the highest court of the state "that full power and authority over the matter of union terminal depot facilities of the railroads who are largely engaged in interstate commerce, and who are the petitioners herein, has been vested in the Interstate Commerce Commission under the terms of said amendatory act of 1920, and that by virtue thereof the Railroad Commission of California, one of the respondents herein, has been divested of the power, authority and jurisdiction over that subject, sought by it to be exercised in the several proceedings before it and by the order presented for review herein." (Tr. 233.)

It therefore appears that the question of the exclusive jurisdiction and control of the subject matter of these controversies by the Federal Commission and resultant lack of jurisdiction of the State Commission to enter the orders set forth in the transcript has been considered of controlling importance.

Requirements, Scope and Effect of the Orders of the State Commission

This question necessarily can not be determined without first giving consideration to the express requirements and necessary effect of the Commission's decisions and orders. In entering its second order the California Commission held that as far as its original decision and order were

considered "pertinent and of value" that it was approved except as modified in the second decision and order, and therefore the orders must be read and considered together.

As is stated by counsel for petitioner in the brief in support of their petition for the writ:

> "The relief asked by the various complaints included a *general investigation of the whole railroad and terminal situation*, the separation or abolition of dangerous grade crossings, and the construction and use jointly by the three railroad companies of the union passenger depot." (Br. pp. 3, 4.)

It is contended by the petitioner's counsel at page 3 of their supplemental brief that the order requires the respondents to:

> Procure jointly grounds for a union depot within a specified area.
>
> File plans and specifications jointly for the construction of a union passenger depot.
>
> Construction of a depot in accordance with the plans.
>
> Eliminate certain grade crossings.

Respondents agree that the requirements of the order are as stated by counsel but that there are many other requirements of the orders which have not been specified by petitioner's counsel and which will hereafter be set forth.

Elimination of Grade Crossings

So far as grade elimination is concerned it may be here stated that there never has been any controversy between the complainants in the proceedings before the Commission and the carriers, or between the carriers and the Commission, as to the necessity of eliminating the grade crossings specified in the Commission's order.

It may be incidentally related that under the plan proposed by the Southern Pacific and Salt Lake lines, as fully set forth in the application made by these lines (Tr. p. 31) and the agreement attached to the application found in the appendix of the supplemental transcript, (p. 573) according to the uncontradicted evidence of the engineering experts of these lines, would entirely eliminate all grade crossings of the steam lines and in addition would eliminate 21,600 street crossing movements of the Pacific Electric suburban trains daily, which would not be eliminated under the orders entered by the Commission. Unqualified statements to similar effect were made by counsel representing the carriers from the beginning of the proceedings until they closed their final arguments.

THE CALIFORNIA COMMISSION'S ORDERS REQUIRE RESPONDENTS TO EXTEND, ABANDON PORTIONS OF MAIN LINES AND TERMINAL FACILITIES, AND CONSOLIDATE TERMINAL FACILITIES, AND MAKE JOINT USE THEREOF.

Respondents disagree, however, with counsel's statements as to what the orders do not require. It is contended that the orders do not require the construction or extension of any line of railroad. It is unnecessary to refer to the transcript to refute this statement because of the statements contained in the brief filed by petitioner in support of their petition for the writ. The map attached to Petitioner's brief does not, as is contended by counsel at page 17 of that brief, show that the Salt Lake and Santa Fe lines border the area designated by the Commission in which the carriers are required to construct a union terminal. The map shows that the Salt Lake line does not own or operate any track that "borders" or in any wise reaches any part of the specified area. The Salt Lake line would be obliged to either extend its line across the Los Angeles River to the site of the union depot or arrange with either the Southern Pacific or Santa Fe lines for the joint use of their trackage, or as a possible alternative extend its lines from the point marked "spur" on the southerly portion of the map to which reference has been made across the river and thence through the industrial section of Los Angeles to the "area fixed by the order."

By reason of the fact that the Southern Pacific Company is obliged to eliminate all its main line traffic from Alameda Street from Fifteenth Street on the south to College Street on the north, a distance of three miles, thereby completely severing its main line operations between these points, it will be obliged to provide a means of carrying its lines between Fifteenth and College Streets by the "extension" of new lines or by the "joint use of main line and terminal facilities" of one or both of the other steam lines. This is conceded by counsel for petitioner at pages 17 and 18 of their brief where it is stated:

> "It is obvious from an inspection of the map that this southerly traffic can reach the proposed depot site in at least three different ways; by a *new line* which the Southern Pacific might construct along the river bed reaching the depot in the same way that the southerly lines of the Salt Lake and Santa Fe reach it; by some arrangement with either the Salt Lake or Santa Fe for a *joint use of tracks* for southerly traffic; by an amendment to the commission's order permitting the southerly traffic to come into the depot upon the present tracks along Alameda Street."

The suggestion contained in this statement that there be a further amendment to the Commission's order, of course should be given no consideration because we are here concerned with orders that have been made and sought to be effected and not with possible amendments thereof.

That there must be "extensions" of existing lines is further shown by the statement found on page 21 of the petitioner's brief to which reference has been made.

> "True, the erection of a new union depot and the elimination of grade crossings will require a rearrangement of traffic. Some new track may have to be laid and some old track abandoned."

The express provisions of the Commission's orders show conclusively that the carriers are required to make extensions in their lines. The orders provide that the carriers "proceed to the procurement of sufficient grounds within the boundaries hereinafter set out, and proceed with the construction of an adequate union passenger station thereon and buildings incidental thereto in the City of Los Angeles, and to make such *additions to, extensions of*, improvements and changes in the existing railroad facilities of said companies as may be reasonable necessary and incidental to the use of said union passenger station." (Tr. 146.)

It is further argued that the orders do not require the "abandonment of any line of railroad." It is inconceivable that such contention should be made in view of paragraph 14 of the final order entered by the California Commission. (Tr. 150, 151.) The Southern Pacific Company is required by this provision of the order to abandon this three miles of its main line for all train operation

over which it operates 39 main line passenger trains carrying interstate passengers each day. (C. R. C. Exhibit No. 29.)

Counsel for petitioner seek to discount these controlling facts by arguing (Br. p. 23:)

> "Here, the carriers will not abandon or cease operating their roads or any part of them. They will merely shift their lines in such a way as to carry on the same operations they do now, but with more safety and convenience to the public."

But, nevertheless, the admission is made (Br. p. 21) that "some new track may have to be laid and some old track abandoned." But the geography of the territory involved in the Commission's orders, as shown on the map incorporated in petitioner's brief and the statements contained in their brief, lead to the inevitable conclusion that the Commission's orders expressly and also by their necessary effect require the carriers to make extensions of their lines, to abandon portions of their lines, and further contemplate the joint use of terminal facilities, main line and trackage by the other carriers. (See petitioner's brief pp. 17, 18, 21, 26).

It is impossible to escape the conviction that the findings and conclusions of the Commission require a comprehensive abandonment, extension, and consolidation of the terminal facilities of re-

spondents at the City of Los Angeles, the extent to which the orders go being further emphasized by the fact that the respondents will be required to expend a sum of $36,002,191 in fulfilling the requirements of the Commission's orders irrespective of the expense of eliminating grade crossings. (C. R. C. Exhibit No. 2. S. P.-S. L. Exhibit No. 27.)

THE NEW NATIONAL POLICY DECLARED BY THE AMENDMENTS OF 1920 TO THE INTERSTATE COMMERCE ACT.

Under the provisions of the amendments to the Act to Regulate Commerce, approved February 28, 1920, Chapter 91, 41 Stats. at L. 456, Congress enlarged the authority of the Interstate Commerce Commission and vested the Commission with power and authority to require carriers "subject to the jurisdiction of the Interstate Commerce Commission" to extend and consolidate their lines and terminal facilities thereby depriving state commissions of any similar jurisdiction that they might previously have exercised, and no carrier may abandon any portion of its line without express authority of the Interstate Commerce Commission.

In deciding the case of *Railroad Commission of Wisconsin, et al. vs. C. B. & Q. Ry. Co.*, 257 U. S. 563, this court, referring to the compre-

hensive amendments that had been made to the Interstate Commerce Act held that it was "manifest from this very condensed recital that the act made a new departure" and we may add not only as far as the regulation of rates is concerned but also with reference to the financial affairs and actual operations of the carriers.

This court has had frequent occasion to consider these amendments to the Interstate Commerce Act and it is therefore deemed unnecessary to do more than make brief reference to the amendments upon which respondents rely.

In construing the amended act in order to properly determine what jurisdiction has been confided to the Interstate Commerce Commission to the exclusion of the state commissions, it is necessary in accordance with the elementary rule of statutory construction to consider the act in its entirety.

It will then become apparent that Congress in the exercise of its constitutional power sought by these amendments to vest the Federal Commission with authority to regulate carriers "subject to the jurisdiction of the Interstate Commerce Commission" in a more comprehensive and complete manner than was contemplated prior to the amendments of 1920, and that it was the intention of Congress to occupy by Federal control the entire field as far as necessary to comprehensively

regulate the operation and financial affairs of interstate carriers in order to make certain that the transportation needs of the entire country would be most completely served and protected.

Congress Has Covered Every Detail of the Subject so Completely and in Such a Manner as to Manifest Its Purpose to Exercise Its Constitutional Authority and Therefore the Regulating Power of the States to Compel Extensions, Abandonments, Consolidations and Joint Use of Terminal Facilities Has Ceased to Exist and All State Regulations of These Matters Have Been Superseded.

Until these amendments to the Federal statute became effective the Interstate Commerce Commission had no power to regulate interstate carriers in these particulars but by the enactment of this amended law Congress undertook to adopt a "national policy" which contemplates the exercise of Federal power heretofore lying dormant, thereby automatically divesting the several state commissions of power to effect consolidation of terminals and other facilities or the abandonment or extension of the lines of carriers subject to the jurisdiction of the Federal Commission.

Erie R. R. Co. vs, N. Y., 233 U. S. 671, and cases cited.

Houston, East & West Texas Ry. Co., vs. U. S., 234 U. S. 342.

Adams Express Co. vs. Croninger, 226 U. S. 491.

Texas & Pacific Ry. Co. vs. Rigsby, 241 U. S. 33, 41-2.

Northern Pacific Ry. Co. vs. Washington, 222 U. S. 370, 378.

Railroad Comm. of Wisconsin vs. C. B. & Q., 257 U. S. 563.

In deciding the Minnesota Rate Case, the Supreme Court of the United States held that:

> "The power of Congress to regulate commerce among the several states is supreme and plenary. It is 'complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution.'"
>
> *Minnesota Rate Case*, 230 U. S. 352, 398, citing Gibbons v. Ogden, 9 Wheaton, 1.

The Supreme Court further held that:

> "there is no room in our scheme of government for the assertion of state power in hostility to the authorized exercise of federal power. The authority of Congress extends to every part of interstate commerce, and to every instrumentality or agency by which it is carried on, and the full control by Congress of the subjects committed to its regulation is not to be denied by the commingling of interstate and intrastate operations."

State commissions may act in such matters under authority vested in them by state statutes until the Congress has vested the Federal Commission with similar power, and whenever the Federal Govern-

ment undertakes to regulate such matters the power of the state commission is automatically divested.

> "Wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves the control of the other, it is Congress and not the state that is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority and the state and not the nation would be supreme within the national field."
>
> (*Houston, etc. R. Co. v. U. S.*, supra.)

In deciding the case of Akron C. & Y. Ry. Co. vs. U. S., decided February 19, 1923, U. S. Supreme Court Advance Opinions, No. 10308, this court held that the

> "Transportation Act, 1920, introduced into the Federal legislation a new railroad policy. * * * Theretofore, the effort of Congress had been directed mainly to the prevention of abuses; particularly, those arising from excessive or discriminatory rates. The 1920 Act sought to insure, also, adequate transportation service. That such was its purpose, Congress did not leave to inference. The new purpose was expressed in unequivocal language. And to attain it, new rights, new obligations, new machinery, were created. The new provisions took a wide range. Prominent among them are those specially designed to secure a fair return on capital devoted to the transportation service. Upon the Commission new powers were conferred and new duties were imposed."

Mr. Chief Justice Taft, speaking for an unanimous court in deciding the case of *Railroad Commission of Wisconsin, et al., v. C. B. & Q. R. R. Co.*, supra, where the comprehensive amendments to the Federal statute were under review, held that:

> "Congress in its control of its interstate commerce system is seeking in the Transportation Act to make the system adequate to the needs of the country by securing for it a reasonable compensatory return for all the work it does. The states are seeking to use that same system for intrastate traffic. That entails large duties and expenditures on the interstate commerce system which may burden it unless compensation is provided for the intrastate business reasonably proportionate to that for the interstate business. Congress as the dominant controller of interstate commerce may, therefore, restrain undue limitation of the earning power of the interstate commerce system in doing state work. The affirmative power of Congress in developing interstate commerce agencies is clear. *Wilson v. Shaw*, 204 U. S. 24; *Luxton v. North River Bridge Co.*, 153 U. S. 525; *California v. Pacific Railroad Company*, 127 U. S. 1, 39. In such development, it can impose any reasonable condition on a state's use of interstate carriers for intrastate commerce it deems necessary or desirable. This is because of the supremacy of the national power in this field."

The Railroad Commission of the State of California likewise apparently recognizes that the Interstate Commerce Commission has, by the amendments of the Federal statute, been vested

with exclusive jurisdiction in matters relating to the abandonment or extension of lines or the consolidation of terminal facilities.

This statement is supported by the decision rendered by the Commission on April 26, 1921 (Tr. 68), where it was held:

> "The recognition of the necessity that in the future we must have in this country unified railroad terminal development in the larger cities has been definitely incorporated by Congress in the new Transportation Act. It is in that Act also recognized that it will not be sufficient to leave the necessary terminal unification to the carriers alone. *Power is given the Interstate Commerce Commission in the Esch-Cummins Act, to order terminal unification.* This, it seems to us, is a sound and inevitable development. With the present relation between the railroads and the people, whereby the government undertakes to fix rates under a prescribed system, designed to give to the railroads, as nearly as may be, a guaranteed income, in addition to a guaranteed reimbursement of operating expenses, it seems self-evident that every effort must be made to furnish the best possible transportation facilities at the lowest possible cost. * * *"

It therefore appears that the Railroad Commission of the State of California and the highest court of that state have confirmed respondent's understanding of the law.

Petitioner, however, specifies as errors for the reversal of the judgment of a state court that:

> "The California commission has authority under state law * * * to order the three railroad companies to erect a union depot.
>
> The state Court erroneously construed the federal statute amendatory of the Interstate Commerce Act as having deprived the state of this jurisdiction and vested it in the Interstate Commerce Commission.
>
> The state Court failed to give effect to the proviso of Section 1, paragraph 17 of the amended Interstate Commerce Act and to the principle announced in the case of Missouri Pacific Railway Company v. Larabee Flour Mill Company, 211 U. S. 612." (Br. pp. 18, 19.)

Counsel argues that the state's power remains unimpaired and the state commission's order is valid unless the Interstate Commerce Commission makes an inconsistent order.

In other words it is the contention of petitioner that notwithstanding the fact that Congress has vested the Interstate Commerce Commission with the control and supervision of the financial and physical operations of carriers, including the all important questions of extensions and abandonment of their lines, consolidation and joint use of main tracks and terminal facilities, these powers confided to the interstate Commerce Commission, unless actually exercised in a particular case, leave any powers which may be vested in the state commission unimpaired and in full force and effect.

Petitioner contends that the case of *Missouri Pacific Ry. Co. v. Larabee Flour Mills Co.*, 211 U. S. 612, is controlling.

In that case the jurisdiction of the Supreme Court of Kansas was invoked by the Mill Company for a writ of mandate compelling the railroad to discharge its *common law* obligation of switching cars locally between a foreign line and the plant of the Mill Company. The right was not asserted under any State statute nor under any order rendered by a commission or other regulatory body. The refusal of the railroad company to perform this *local switching* "was based solely upon the ground" that certain demurrage charges had not been paid by the Mill Company and not upon the ground "that the service constituted a part of interstate commerce." After its refusal to switch for the Mill Company the railroad continued to perform similar services for other industries and this Court held that the railroad was obliged to treat all industries alike irrespective of any legislative enactment or special mandate from any commission because "the duty arose from the fact that it was a common carrier", and that this obligation, irrespective of legislative action or special mandate, could be enforced by the courts. This Court affirmed "the oft repeated rule that the State in the absence of express action by Congress may regulate matters which *indirectly* affect interstate commerce" and cited authorities in support of the well recognized rule that "the mere grant of such a power *to* Con-

gress would not imply a prohibition on the States to exercise the same power. That it is not the mere existence *of* such a power but its exercise *by* Congress which may be incompatible with the exercise of the same power by the States and that the States may legislate in the *absence* of Congressional legislation." The Court further held that merely because Congress had vested the Interstate Commerce Commission with "a large measure of control over interstate commerce," nevertheless in the absence of *specific* action by Congress or the commission the control of the State over these *merely incidental* matters remains undisturbed." The Court inferentially held that the switching involved was an "incidental matter" and that "this common law duty the State in a case like the present may, at least in the absence of Congressional action, compel a carrier to discharge."

It may be noted that the dissenting opinion by Mr. Justice Moody, with which Mr. Justice White concurred, and with which Mr. Justice Holmes stated he was inclined to agree, held that assent could not be given to the proposition that although Congress had vested the Federal Commission with authority to deal with the exact situation presented this fact was immaterial because the Commission had taken no action.

But for the purposes of this argument we will accept the views expressed in the majority opinion as settled law. Nevertheless it is our contention

that the Larabee case does not support petitioner's conception of the law but is wholly inapplicable because under the facts set forth in that decision it appears that the Court was dealing with what the opinion aptly styled "regulations of a local character", namely, a local switching service, which was characterized by the court as "incidental matters", whereas in the case at bar we are dealing with orders requiring three transcontinental railroads engaged largely in interstate commerce to expend millions of dollars in extending and abandoning their main lines, and enlarging, abandoning and consolidating their terminal facilities.

The principle of the Larabee Case has no application here because of the Transportation Act itself Congress has put an inhibition upon the carriers, coupled with severe penalties, prohibiting them from extending their lines, from abandoning lines, from consolidating lines, except upon permission first obtained from the Interstate Commerce Commission. By such action Congress has clearly taken away from any other body except the Interstate Commerce Commission power to compel the carriers to do these very things, whereas, in the Larabee Case, Congress had merely at the most conferred upon the Interstate Commerce Commission general power upon the complaint of shippers to enter specific orders regulating the practices of carriers relating to switching.

Congress Has "Acted" by Exercising Its Constitutional Authority in Regulating the Matters Covered by the Commission's Orders and Power Thus Exercised Is Incompatible with the Exercise of the Same Power by the States.

It can not be held that the orders of which complaint is made here are merely "local" or "incidental", but it is apparent that the orders directly interfere with and burden interstate commerce, and that irrespective of any action by the Commission, Congress has "specifically acted" in adopting the amendments to the Interstate Commerce Act of 1920.

In deciding the case of *Southern Ry. Co. v. Railroad Comm. of Indiana*, 236 U. S. 439, 446-8, the Court held:

> "The test, however, is not whether the State legislation is in conflict with the details of the Federal law or supplements it, but whether the State had any jurisdiction of a subject over which Congress had exerted its exclusive control."

The question to be determined here, as in the case of *Southern Ry. Co. v. Reid*, 222 U. S. 436, is "to what extent and how directly must it (the power of Congress) be exercised to have * * *" the effect of superseding the concurrent power of the State which might be exercised in the absence of Congressional legislation.

After quoting the rule announced in the Larabee case the Court held that "the principle of that case, therefore, requires us to find specific action either by Congress in the Interstate Commerce Act or by the Commission covering the matters which the statute * * * attempts to regulate." "Does it (the action by Congress) * * * take control of the subject-matter and impose affirmative duties upon the carriers which the State cannot even supplement? In other words, has Congress taken possession of the field?"

In the case of *Southern Ry. Co. v. Reid & Beam*, 222 U. S. 444, 447, referring to the preceding decision in the Reid case, the Court held that "there need not be directly 'inhibitive congressional legislation,' but congressional legislation which occupies the field of regulation and thereby excludes action by the State."

The Larabee case was again cited by this Court in deciding the case of *M. K. & T. Ry. Co. of Texas v. Harris*, 234 U. S. 412, 417, and, as in the Reid case, emphasis was laid upon the fact that interstate commerce was only "incidentally affected" and was not "directly burdened or interfered with" by the judgment of the State Court enjoining upon the carrier the duty of discharging its common law obligation. It was held by the Court in the case last cited that the State statute only dealt with a question of costs "respecting which Congress had

not spoken" and that "only until Congress did speak the State might enforce its statutes which only 'incidentally' affected interstate commerce." Where, however, a State statute or an order of a State commission does not merely "incidentally" affect interstate commerce, but does directly interfere with or burden interstate commerce, this Court has uniformly held that the authority sought to be exercised by the States either through the medium of their administrative or judicial tribunals must fall and the carriers relieved from complying with any such orders.

> "When Congress acts in such a way as to manifest its purpose to exercise its constitutional authority the regulating power of the State ceases to exist."

Erie R. R. Co. v. N. Y., 233 U. S. 671.

Minnesota Rate Cases, 230 U. S. 352, 399-412.

Houston, East & West Texas Ry. Co. v. U. S., 234 U. S. 342.

N. Y. C. R. R. Co. v. Hudson County, 227 U. S. 248, 264.

Second Employers' Liability Cases, 223 U. S. 47-8, 53-55.

Southern Railroad Co. v. Railroad Commission of Indiana, 236 U. S. 439, 446-448.

A. T. & S. F. Ry. Co. v. Harold, 241 U. S. 371, 378-379.

T. & P. Ry. Co. v. Rigsby, 241 U. S. 33, 41-42.

Southern Ry. Co. v. Prescott, 240 U. S. 632, 639-640.

Atlantic Coast Line R. R. Co. v. Georgia, 234 U. S. 280, 291-4.

Pa. R. R. Co. v. Public Service Commission, 250 U. S. 556, 569.

Spokane & Inland R. R. v. Campbell, 241 U. S. 497, 509.

Boston & Maine R. R. v. Hooker, 233 U. S. 97, 110.

A. T. & S. F. Ry. v. Robinson, 233 U. S. 173-180.

Seaboard Air Line Ry. v. Horton, 233 U. S. 492, 501.

Taylor v. Taylor, 232 U. S. 363, 368.

St. Louis, etc. Ry. Co. v. Seale, 229 U. S. 156, 158.

St. Louis, I. M. & S. Ry. Co. v. Hesterly, 228 U. S. 702, 704.

Michigan Central R. R. Co. v. Vreeland, 227 U. S. 59, 66-7.

St. Louis v. Edwards, 227 U. S. 265, 268-9.

To borrow the language used by this Court in deciding the case of *Adams Express Co. v. Croninger*, 226 U. S. 491:

> "Almost every detail of the subject is covered so completely that there can be no rational doubt but that Congress intended to take possession of the subject and supersede all State regulation with reference to it."

Railroad Comm. of Wisconsin v. C. B. & Q. R. R. Co., supra.

Akron C. & Y. Ry. Co. v. U. S., supra.

The language employed by this Court in deciding the case of *Northern Pacific v. Washington*, 222 U. S. 370, 378, aptly states the rule to be followed in determining whether *Congress* has acted.

> "It is elementary, and such is the doctrine announced by the cases to which the court below referred, that the right of a State to apply its police power for the purpose of regulating interstate commerce, in a case like this, exists only from the silence of Congress on the subject, and ceases when Congress *acts* on the *subject or manifests its purpose to call into play its exclusive power*. This being the conceded premise upon which alone the state law could have been made applicable, it results that as *the enactment by Congress* of the law in question was an assertion of its power, *by the fact alone of such manifestation* that subject was at once removed from the sphere of the operation of the authority of the State."

See also *Gulf, etc. Ry. Co. v. Hefley*, 158 U. S. 98, 104-5.

The most cursory examination of the Interstate Commerce Act as now amended, particularly Subdivision 15 of Section 1; Subdivisions 18 to 22, inclusive, of Section 1; Subdivision 4 of Section 3; Subdivision 4 of Section 5; section 15a, and Section 20a, will bear out the statement that the powers which have been confided to the Federal Commission are incompatible with the exercise of the same powers by the states. This court characterized the provisions found in Section 15a of the act as "the most novel and most important features of the

act * * *," as it requires the Commission to prescribe rates so as to enable carriers engaged in interstate commerce, as a whole or in groups selected by the Commission, to earn an aggregate annual net railway operating income equal to a fair return upon the aggregate value of the railway property used in transportation, and sought to avoid excessive incomes accruing to the carriers better circumstanced by using one half of the excess for loans to other carriers. The provisions of Subdivision 4 of Section 5 are also novel and make a "radical departure" in enjoining upon the Commission the duty "as soon as practicable" to adopt a plan "for the consolidation of the railway properties of the continental United States into a limited number of systems."

> "The act further put under the control of the Interstate Commerce Commission, 1st, the issuing of future railroad securities by the interstate carriers; 2nd, the regulation of their car supply and distribution and the *joint use of terminals;* and, 3rd, their *construction* of new lines, and their *abandonment* of old lines. * * * * * * * *
>
> The new measure imposed an affirmative duty on the Interstate Commerce Commission to fix rates and to take other important steps to maintain an adequate railway service for the people of the United States. This is expressly declared in Section 15a to be one of the purposes of the bill."

Railroad Comm. of Wisconsin v. C. B. & Q. R. R. Co., supra.

The policy declared by Congress is national in its scope and in administering the act the Commission is enjoined to give consideration to the transportation needs of the country and the "necessity of enlarging facilities" to "best promote the services in the interest of the public and the commerce of the people" and to this end Congress has established the Railroad Labor and Adjustment boards, has vested the Federal Commission with power relating to the raising of capital by new government loans, loans from the general railroad contingent fund, the issuing of new securities, consolidation of railroads into a limited number of systems, joint use of terminals, and the interchange of traffic.

It is for the Federal Commission to say whether there is necessity for the enlargement of facilities and to determine whether conditions and betterments are necessary or whether the amounts expended therefor are reasonable, whether the management of the interstate carriers has been honest, efficient, and economical, to determine what expenditure shall be charged, and capital account, and operating expenses. The declared national policy of Congress can not be carried into effect but will be hampered and retarded, and interstate commerce burdened if not destroyed, and the transportation systems of the nation demoralized, if the states are to be left free to enter orders such as these.

The States Can No More Supplement the Requirements of the Federal Statute than They Can Annul Them.

Counsel for petitioner in attempting to uphold the jurisdiction of the State Commission suggest in the brief filed in support of petition for the writ, page 29, that if in "partial compliance with the State Commission's orders it should become necessary to invoke the jurisdiction of the Interstate Commerce Commission in connection with any part of the work, such as the joint use of tracks or for the issuance of securities" * * * "there is no reason why application therefor can not be made to the Interstate Commerce Commission at that time." In effect they are suggesting the concurrent jurisdiction of the Federal and State Commissions. Any such contention is opposed to the authorities already cited.

In deciding the case of *Southern Ry. Co. v. Railroad Commission of Indiana*, 236 U. S. 439, 446-448, the Court cites the case of *Prigg v. Commonwealth of Pennsylvania*, 16 Pet. 539, 617, where it was held:

> "If Congress have a constitutional power to regulate a particular subject, and they do actually regulate it in a given manner, and in a certain form, it cannot be that the state legislatures have a right to interfere; and, as it were, by way of complement to the legislation of Congress, to prescribe additional regulations, and what they may deem auxiliary provisions for the same purpose."

In deciding the case of *Erie R. R. Co. v. N. Y.*, 233 U. S. 671, it was held that notwithstanding a Federal statute did not become operative until a year after its adoption, that nevertheless the State could not in the interim enforce similar legislation upon the ground that "the State had simply supplemented the action of the Federal authorities." It was held that there may not be a division of the field of regulation "but an exclusive occupation of it when Congress manifests a purpose to enter it."

It was held in the case of *Pennsylvania R. R. Co. v. Public Service Commission*, 250 U. S. 566, 569:

> * * * * * "When the United States has exercised its exclusive powers over interstate commerce so far as to take possession of the field, the States no more can supplement its requirements than they can annul them." Citing cases.

The rule is well stated in the case of *Charleston & Western Carolina Ry. Co. v. Varnville Furniture Co.*, 237 U. S. 597, 604.

> "When Congress has taken the particular subject-matter in hand coincidence is as ineffective as opposition, and a state law is not to be declared a help because it attempts to go farther than Congress has seen fit to go." Citing cases.

Petitioner has argued, page 19 of brief filed in support of petition, to the effect that the California statute is broader in its scope than the Interstate Commerce Act because no provision is contained in the Interstate Commerce Act authorizing the erec-

tion of "union passenger depots." But as has already been shown, it will become necessary in erecting a union passenger depot to extend and abandon main lines and terminal facilities of respondents, consolidate their terminal facilities and provide for the interchange of traffic, which are particular subjects of regulation which now have been confided to the Federal Commission. Under the authorities last cited it can not be held that even though the California statute is susceptible to the interpretation placed upon it by petitioner's counsel, and "attempts to go farther than Congress has seen fit to go" it thereby is resurrected and given efficacy. As was said in the case of *Gulf etc. Ry. Co. v. Hefly, supra*:

> "It is unnecessary to pursue this discussion further. The State statute and the national law operate upon the same subject-matter, and prescribe different rules concerning it. The national law is unquestionably one within the competency of Congress to enact under the power given to regulate commerce between the States. The State statute must, therefore, give way."

Construction Placed Upon the Transportation Act by State Courts.

The courts of several of the States have, since the Interstate Commerce Act was amended in 1920, had occasion to consider the relative jurisdiction of the Interstate Commerce Commission and State commissions as affected by these amendments.

The case of *State ex rel, etc. v. Atlantic Coast Line R. R. Co., Florida*, 87 Southern Reporter, 773, decided February 15, 1921, involved the construction of the Transportation Act, 1920, and involved the jurisdiction of the State Commission to require a railroad to make a physical connection between its lines and the wharf operated by the Clyde Steamship Company. The Supreme Court of Florida had in an earlier decision required the carrier to make such connection under the provisions of the Florida statute but upon its attention being directed to the provisions contained in the Transportation Act, vesting the Interstate Commerce Commission with power to compel carriers to make such physical connections between their lines and water carriers, held that the

> "entire and exclusive jurisdiction over the matter of requiring physical connection between rail and water carriers has been given by Congress to the Interstate Commerce Commission, and there is no field for the operation of State laws, or control by the State Railroad Commission, over the same subject-matter."

> "Until Congress gave to the Interstate Commerce Commission entire and exclusive jurisdiction over the matter of physical connection between rail and water carriers, the State had full power and jurisdiction over the subject; but when Congress exercised the power, and lodged the entire and exclusive jurisdiction over it in the Interstate Commerce Commission, the right of the State over the same subject-matter was extinguished."

At page 778 of the opinion the Court cites the case of *Missouri Pacific Ry. Co. v. Larabee Flour Mills Co.*, supra, and distinguishes the case upon the ground that in the Larabee case Congress had not expressly vested the Interstate Commerce Commission with the "power and duty with regard to switching service" and held that if such authority had been vested in the Federal Commission to the same extent that it had vested the Commission with power to require physical connections between rail and water lines, that the Supreme Court of the United States would have held otherwise.

Congress has, by Subdivision 4 of Section 3 of the amended act, expressly vested the Interstate Commerce Commission with power to require carriers owning terminal facilities to permit the use by other carriers of such terminal facilities including the main track or tracks for a reasonable distance outside of such terminals.

We direct the Court's attention to the fact that there is no express provision in the Public Utilities Act of California requiring one railroad to admit another to the joint use of its private property. If any such power is found it is in Section 41 of the Act, which merely authorizes the California Commission to admit another carrier to the joint use of its tracks situated on, over or under any street or highway. No power is conferred upon the California Commission to compel the joint use of

tracks where they are situated on privately owned right of way, but even though such power had been conferred the Federal statute would nevertheless be controlling.

The Supreme Court of the State of New York has likewise held that an order of the Public Service Commission of that State requiring carriers to make connections between their lines and to provide such tracks and facilities as "may be necessary to establish and furnish adequate and convenient interchange of freight * * *" is repugnant to the provisions of paragraph 2 of Section 3 of the Interstate Commerce Act, as amended in 1920, requiring carriers to provide for the interchange of traffic between their respective lines, and that the Congressional Act "excludes the jurisdiction of the State Public Service Commission to make the same requirements of interstate carriers under the principle that Congress having delegated to the Interstate Commerce Commission power to deal with the subject matter, an exercise of like power by the State is thereby superseded."

> *People v. Public Service Comm.*, 135 N. E. 195, 196, 197.

The case of *People, ex rel New York Central R. R. Co. v. Public Service Commission*, 190 N. Y. Supplement, 636, holds that the Transportation Act as amended,

> "not only gives the Interstate Commerce Commission power to establish physical connection

> between lines of rail carriers and docks, but also to direct rail and water carriers, singly or jointly, to construct and connect with lines and to determine and prescribe the terms and conditions of operating such connections, and that thereby "such matters are entirely removed from the State and its Public Service Commission has no authority to order such connections."

This decision was affirmed in a memorandum opinion by the New York Court of Appeals, 134 N. E. 590, that court simply saying that the subject matter of the controversy had by the Transportation Act of 1920 been relegated to the Interstate Commerce Commission. Thereupon application was made to the Supreme Court of the United States for a writ of certiorari, which application was denied without an opinion (258 U. S., 621).

The latest case which has been brought to our attention is that of *Shealy, et al. v. Southern Ry. Co.*, decided by the Supreme Court of the State of South Carolina, April term, 1923 (opinion not yet published), involving the jurisdiction of the Railroad Commission of South Carolina to compel the railway company to construct certain station sheds at a station on its lines. The Court refers to previous decisions rendered by it sustaining the power of the State Commission to enter such orders, but states that the cases cited are not controlling by reason of the fact that:

> "The Transportation Act of 1920 effected a radical departure, and introduced into Federal legislation a new railroad policy. It has placed the entire control over rates, properties, tracks, terminals and facilities of railroads engaged in interstate commerce, in and under the jurisdiction of the Interstate Commerce Commission."

The Court supports its decision by the case of *Akron C. & Y. Ry. Co. v. U. S.*, cited therein, and cites with approval the decision rendered by the Supreme Court of the State of California in the case at bar. The Court further held:

> "Another consideration is conclusive of the purpose of the Act to control the matter of non-productive, additional facilities and terminals, and having pre-empted this field, all regulation by the States is interdicted. This matter is not only subjected to the control of the I. C. Commission, but it is so inter-related with the purpose of the Act in supervising transportation facilities and in fixing rates, that interference by the States therewith necessarily affects interstate commerce."

The Court then goes on to analyze the amendments of 1920 to the Federal statute and holds that the policy announced by Congress will be thwarted and will result "in the complete breaking down and ultimate failure of the Constitutional purpose * * *" if the States are permitted to continue to exercise the powers relating to the enlargement and extension of transportation facilities by interstate carriers.

We have been able to find but two decisions rendered by state courts where a rule contrary to that announced by the Supreme Court of the State of California is sustained. That of *C. R. I. & P. Co. v. State of Oklahoma*, 217 Pac. Rep. 147, where it was held that, notwithstanding the amendments made to the Transportation Act, 1920, the State of Oklahoma still might, through its Corporation Commission, require railroads engaged in intrastate and interstate commerce to provide adequate passenger facilities "except when such orders are inconsistent with some lawful order of the Interstate Commerce Commission or when said orders amount to an unjust discrimination against interstate commerce or amount to an unjust and unreasonable burden on interstate commerce and would interfere with the railroads in complying with their obligations in relation to interstate commerce." This case was decided prior to the announcement of the decision by this court in the Akron case. The state court reached the conclusion that by the amendments to the Federal Statute, Congress did not intend to occupy the field of regulating interstate commerce to the extent of preventing the state commissions from compelling carriers to enlarge their passenger facilities unless the Interstate Commerce Commission had previously entered such an order. The court gives no consideration to the broad scope of Federal regulation or the adoption of the new Congressional policy as so thoroughly outlined in the case of *Akron C. & Y. Ry Co. v. U. S.*, and

Shealy et al. v. Southern Ry. Co., supra, but rests its decision largely upon the proviso of Subdivision 17 of Section 1 of the act. It would appear that the Oklahoma court, in an effort to sustain the jurisdiction of the State Corporation Commission, has placed a narrow and strained construction upon the amended Interstate Commerce Act and has given no consideration to the conflict which would inevitably result from such construction of the Federal statute. Orders such as were entered by the Oklahoma Commission would directly interfere with and burden interstate commerce.

The Supreme Court of North Carolina has rendered a decision, the full text of which is not at hand, and we are therefore unable to review this decision at this time.

The foregoing authorities make it apparent that the state courts where questions similar to those in the case at bar have been raised have, with the exceptions noted, held in accordance with the California court that the statutes of their respective states have been superseded and the powers with which their Public Service Commissions were formerly vested have been circumscribed and superseded by the adoption of the new national railroad policy.

The Decisions of the Interstate Commerce Commission, Construing the 1920 Amendments to the Interstate Commerce Act, are in Harmony with the Decision of the Supreme Court of California.

In deciding the case of *T. & P. Ry. Co. v. Abilene*, 204 U. S. 426, 433, it was held that the conclusion reached by the court was "greatly fortified * * * by the * * * reports and decisions of the Interstate Commerce Commission" and it therefore may be well in passing to direct the court's attention to the numerous decisions rendered by the Interstate Commerce Commission wherein the Commission has assumed jurisdiction of matters involving questions arising under the amendment to the Interstate Commerce Act of 1920.

In construing the amendment to Section 3 of the Act relating to the interchange of traffic between connecting carriers, the Commission has held:

> "As amended by the Transportation Act this provision of the law gives us a direct and explicit power to require the use by one carrier of the 'terminal facilities' of another carrier upon certain conditions. It is apparent that the policy of Congress was thus reversed."
>
> *Hastings Commercial Club et al. v. C. M. & St. P. Ry. Co.*, 69 I. C. C. 489, 493.

It will be found that in rendering its decision in the Cleveland Passenger Terminal Case, decided August 21, 1921, 70 I. C. C. 342; decision on re-

hearing same case, December 6, 1921, 70 I. C. C. 659; the Commission authorized the carriers to construct a joint passenger terminal at Cleveland, after giving consideration to the question whether the terminal facilities were required to meet the demands of interstate traffic, whether the location of the union terminal would serve the convenience of interstate passengers, *whether the cost of financing the construction of the terminal was such as to unduly burden interstate commerce.* The Commission reviewed the entire situation relating to all the business of the carriers, state and interstate.

In determining the questions raised by the *Application of Illinois & Kentucky R. R. Co.* to construct line between Edgewood and Metropolis in the State of Illinois, 82 I. C. C. 100, 105, it was held by the Commission: "In our consideration of applications under paragraph 18 of Section 1 of the Interstate Commerce Act we are concerned primarily with the requirements of public convenience and necessity."

The Federal Commission has asserted jurisdiction over these subjects in granting the certificate authorizing Oregon Short Line Railroad to construct a line in Idaho, a distance of 2.66 miles, under the provisions of paragraph 18 of Section 1.

82 I. C. C. 133;

Abandonment of Caddo & Choctaw Railroad, 82 I. C. C. 90.

The Interstate Commerce Commission has constantly exercised its jurisdiction to grant authority to interstate railroads subject to its jurisdiction to either construct or abandon short stretches of line.

> Application for abandonment of branch line by Great Northern denied. 72 I. C. C. 25.
>
> Application for construction of line in Michigan by Michigan Northern denied. 72 I. C. C. 21.
>
> Application of C. & A. R. R. Co. for authority to construct line of railroad granted. 72 I. C. C. 1.
>
> Application of Silverton Ry. Co. for authority to abandon its line of railroad granted. 72 I. C. C. 13.
>
> Application of Virginia & Western Ry. Co. for authority to extend its line of railroad granted; permission to retain excess earnings denied. 72 I. C. C. 55.

It thus appears that the Interstate Commerce Commission has placed a practical construction upon the amendments of 1920, has asserted and exercised jurisdiction over these matters, and that the carriers which are subject to the jurisdiction of that Commission have believed it necessary to invoke the jurisdiction of the Commission to obtain these permissive orders before making extensions or abandoning portions of their line and terminal facilities, even though they involve but short stretches of track. The carriers could not proceed otherwise because of the severe penalties imposed

by the amendments for failure to obtain permission of the Federal Commission before extending or abandoning lines or consolidating terminal facilities.

THE PROVISO FOUND IN SUBDIVISION 17 OF SECTION 1 OF THE TRANSPORTATION ACT OF 1920 DOES NOT RESERVE TO THE STATE POWER TO MAKE THE ORDERS HERE INVOLVED.

That proviso reads as follows:

> "Provided, however, that nothing in this act shall impair or affect the right of a state in the exercise of its police power to require just and reasonable freight and passenger service for intrastate business, except in so far as such requirement is inconsistent with any lawful order of the Commission made under the provisions of this act."

The proviso is contained in the paragraph which makes provision for the Commission to act through such agencies as it shall designate to carry out its orders relating to "car service" as defined in paragraph 10 of the section, and in cases of emergency as provided in paragraph 16 of the section, and where carriers are unable to transport the traffic offered as provided in paragraph 17 of the section, the remaining part of section 17 relating to the penalties which may be imposed by the Courts for failure of a carrier to follow its directions as to car service and to the matters referred to in paragraphs 15 and 16.

It would appear that the proviso relates exclusively to these matters and the only practical construction which can be placed on the proviso is that it merely reserves to the states the right to require just and reasonable passenger service for *intrastate* business in these particulars.

In any event the proviso is not susceptible to the construction that it is operative in cases such as this, where the Commission's orders directly interfere with and burden a large volume of *interstate* traffic. Nor will it bear an interpretation which will prevent the Interstate Commerce Commission from discharging its affirmative duty "to maintain an adequate railway system service for the people of the United States" which is "expressly declared in Section 15a to be one of the purposes of the bill."

Railroad Comm. of Wisconsin v. C. B. & Q., supra.

This proviso neither confers power on the state authorities, nor takes power from the Interstate Commerce Commission. It declares a rule of construction; and it is the same rule which courts have followed and which they would have adopted in construing the Transportation Act without the proviso. For surely no one would assert that the amended act without the proviso deprives a state of power

to require carriers to furnish equipment and move shipments and passengers from point to point in that state with reasonable dispatch and furnish all necessary facilities for handling such *local* business.

But the proviso is strictly limited to this local intrastate business. It does not even save to the state the right to make orders which indirectly or incidentally affect interstate commerce where such orders are made under the police powers of the state; as for instance the number of local trains which shall be run, the times and speeds at which such trains shall be operated, and kindred matters. Those regulations must rest now, as heretofore, on the general police powers of the state.

But in the case at bar the action of the state is not limited to intrastate business. The purpose of the orders would not have been achieved if so limited. Los Angeles is the most populous city in the western half of the United States. And these orders run against three transcontinental lines, the passenger traffic of each of which, in and out of Los Angeles, is chiefly interstate. Here is the western terminal of the Salt Lake Line, now a part of the Union Pacific System; the chief western terminal of the Atchison Line; and one of the main terminals of the Southern Pacific Line.

This is no matter of a waiting room at a way station but of a great new edifice to accommodate all the passengers, mail, express and baggage arriving and departing at one of the largest cities in the country.

It would be folly for the state to say to these carriers: You must receive and set down all your intrastate passengers at Los Angeles on the platform of a union station. Unless the state may control the handling of the passenger traffic, interstate as well as intrastate, and may order that all the business should be handled at one station, including mail, passengers, express and baggage, the whole purpose of the order fails. For the State Commission aims by its order to end the delivery and receipt of passengers, baggage, etc., at the existing stations, especially the large and comparatively new Southern Pacific station.

The Interstate Commerce Commission could not regulate the transportation of interstate carriers from a national standpoint if state commissions were permitted to interfere with and burden interstate commerce to the extent such traffic would be affected by orders such as these, and the Congressional policy to place the entire control of railroad properties, rates, finances, operation, terminals, and facilities under the jurisdiction of the Interstate Commerce Commission would be rendered

nugatory and the Interstate Commerce Commission would be impotent to carry into effect the provisions of Section 15a of the act, and of Subdivision 4 of Section 5, which enjoins upon the Interstate Commerce Commission the duty "as soon as practicable" to "adopt a plan for the consolidation of the railway properties of the United States into a limited number of systems."

When consideration is given to the "new national policy" sought to be accomplished by Congress in adopting the comprehensive amendments of 1920, the only reasonable and practical construction which can be placed upon the proviso without doing violence to the declared policy of Congress is that the several states may issue necessary orders "to require just and reasonable freight and passenger service for *intrastate* business * * *" in cases where such orders do not directly affect or interfere with or burden interstate commerce.

Counsel quotes from the Congressional Record (brief for petition, pp. 30, 31) to aid in construing the amended act, but the language used in the act is clear and unequivocal and in construing the amended act this court has held:

> "Great stress is put on the legislative history of the Transportation Act to show that

the bill was not intended to confer on the Commission power to remove any discrimination against interstate commerce involved in a general disparity between interstate and intrastate rates. Committee reports and explanatory statements of members in charge made in presenting a bill for passage have been held to be a legitimate aid to the interpretation of a statute which in its language is doubtful or obscure. (Citing cases.) But when taking the act as a whole the effect of the language used is clear to the court, extraneous aid like this cannot control the interpretation. (Citing cases.) Such aids are only admissible to solve doubt and not to create it."

Railroad Comm. of Wisconsin v. C. B. & Q. et al., supra.

In the event the interpretation placed upon this proviso by counsel in their brief in support of petition, pp. 42, 43, were to be adopted, it would result in the absurd conclusion that after Congress has delegated to the Interstate Commerce Commission the comprehensive power to permit carriers to extend or abandon lines, to permit and require the consolidation of terminal facilities and the joint use of facilities, provide for the consolidation of the lines of interstate carriers into separate systems, to determine the percentage of return constituting a fair return upon the value of the carrier's property to permit the issuance of securities,

the power so confided to the Federal Commission should lie dormant and leave the states free to legislate directly or through the medium of commissions, relative to all of these matters until the Interstate Commerce Commission itself determined directly or by inference that a particular state statute should be superseded. Until the Interstate Commerce Commission had completed consolidation of the lines of the interstate carriers throughout the United States, had completely regulated their finances in all particulars, had fully acted in determining what extensions, abandonments and joint use of facilities should be permitted, at every point in the United States served by the lines of an interstate carrier, the state commissions, under petitioner's conception of the law, would be free to act, ordering the carriers to expend millions of dollars in these particulars and requiring them to enlarge and consolidate their terminal facilities in a manner which in all human probability would not conform to the final orders entered by the Federal Commission. It is so apparent that any such interpretation of the statute would result in endless confusion and great waste that to state the proposition is to affirm it. As was stated by the court in the case of *Shealy et al. v. Southern Ry. Co.*, supra:

> "The effect of the Transportation Act of 1920 is to limit the power of the states over interstate commerce to an exceedingly circumscribed sphere. They have control of purely

> internal affairs, but that control in so far as it affects interstate carriers must be exercised in a manner that does not project the will of the particular state into other states of the Union. Stone v. F. L. & T. Co., 116 U. S. 334."

In deciding the case of *Adams Epress Co. v. Croninger,* 226 U. S. 491, this court, in speaking of the proviso found in the Carmack Amendment, held:

> "But it has been argued that the non-exclusive character of this regulation is manifested by the proviso of the section, and that state legislation upon the same subject is not superseded, and that the holder of any such bill of lading may resort to any right of action against such a carrier conferred by existing state law. This view is untenable. It would result in the nullification of the regulation of a national subject and operate to maintain the confusion of the diverse regulation which it was the purpose of Congress to put an end to."

This rule is particularly applicable to the case at bar for the reason that in the event the construction for which petitioners contend were placed upon the proviso, paragraph 17 of Section 1, it would not only "result in the nullification of the regulation of a national subject and operate to maintain the confusion of the diverse regulations which it was the purpose of Congress to put an end to," but would "directly interfere with and burden interstate commerce to such an extent as to actually destroy it."

We cannot better express our views than to quote from the Wisconsin case, supra, page 588, where this court, speaking of the "specific proviso of the original Interstate Commerce Act, repeated in the amending acts, that the Commission is not to regulate traffic wholly within a state," held that:

> "Commerce is a unit and does not regard state lines, and, while under the Constitution, interstate and intrastate commerce are ordinarily subject to regulation by different sovereignties, yet, when they are so mingled together that the supreme authority, the Nation, cannot exercise complete effective control over interstate commerce without incidental regulation of intrastate commerce, such incidental regulation is not an invasion of state authority or a violation of the proviso."

The Interstate Commerce Commission Has Taken Jurisdiction and Acted Respecting the Identical Subjects Embraced Within the California Commission's Orders.

Counsel for petitioner argue, original brief p. 33, that the "proviso found in paragraph 17 of Section 1 is in effect a Congressional enactment of the principle announced * * *" in the Larabee case, "namely, that, even when Congress has entered a particular field of interstate commerce and has authorized the Interstate Commerce Commission to exercise jurisdiction therein, nevertheless, unless the matter is to be handled by *general rule or regulation*, the states may continue to act as to particular situations until the Interstate Commis-

sion *takes action* as to such particular situations," thereby conceding that in the event the Interstate Commerce Commission has "taken action" upon the subject of the California Commission's orders the power of the State Commission is superseded and its orders have no efficacy.

If it were held that under the ruling of the Larabee case, or by virtue of the proviso found in Subdivision 17 of Section 1 of the act, the power of the California Railroad Commission to enter these orders continued until the Interstate Commerce Commission had "taken action" on the same subject matter, we find that the facts compel the conclusion that the state statute and powers sought to be exercised thereunder by the California Commission have nevertheless been superseded.

The Interstate Commerce Commission has actually "taken action" in issuing orders on the eighth day of July, 1921, after formal hearings "In the matter of applications under paragraphs 18 to 21, inclusive, Section 1, of the Interstate Commerce Act for certificate of public convenience and necessity for the construction or extension of lines of railroad, and applications under paragraph 18, Section 15a, of said act for permission to retain the excess earnings of newly constructed lines of railroad," and "In the matter of applications under paragraphs 18 to 21, inclusive, Section 1, of the

Interstate Commerce Act for certificate of public convenience and necessity authorizing the abandonment of lines of railroad or the operation thereof."

It, therefore, appears that "the matter is one to be handled by general rule or regulation * * *" and that "the Interstate Commerce Commission has taken action as to such particular situations * * *" referred to at page 3 of brief for petitions.

These orders entered by the Interstate Commerce Commission are binding upon the carriers and upon failure to comply therewith or to observe the provisions of the statute relating to extensions or abandonments, carriers engaged in interstate commerce would subject themselves to the imposition of the severe penalties prescribed by the act.

In the very cases under consideration, as is stated in the motions to advance, on file herein, "*the Interstate Commerce Commission is also confronted with the same question of jurisdiction which is now before this Honorable Court for final determination. After the decision by the Supreme Court of California, the City of Los Angeles filed a complaint before the Interstate Commerce Commission invoking its powers to order the erection, by the three railroads in question, of a union passenger depot in Los Angeles.*"

It may be added that since these motions to advance were filed the Interstate Commerce Commis-

sion in the case referred to in the motions, City of Los Angeles, Complainant, v. L. A. & S. L. R. R. Co. et al., Defendants, I. C. C. No. 14778, has acted upon the complaints filed therein and to which references were made in the motions, by conducting and concluding a formal hearing of the case, Commissioner Mr. Clyde B. Aitchison presiding, and wherein the California Railroad Commissioner, the petitioner now before this court, entered its appearance and participated in the proceedings, which involved precisely the *identical questions* that were presented to the Railroad Commission of the State of California in the cases now under review here.

The following authorities sustain the propriety of directing this court's attention at this time to the general orders entered by the Interstate Commerce Commission and to the action taken by that Commission in the case now pending before it, involving the identical questions determined by the California Commission in its decisions and orders, so as to avoid useless circuity of proceedings.

Dakota County v. Glidden, 113 U. S. 222;
Ridge v. Manker, 132 Fed. 599;
Kimball v. Kimball, 174 U. S. 158;
Gulf, etc. Ry. Co. v. Dennis, 224 U. S. 503.

ISSUES UNDECIDED BY THE SUPREME COURT OF THE STATE OF CALIFORNIA

We have argued that this court should only consider and undertake to decide the question determined by the Supreme Court of the State of California, which is the sole ground upon which petitioners have rested their petitions for writs of certiorari.

Nevertheless as counsel for petitioners have argued these other questions in their brief, we are moved by caution to incorporate an argument relating to them.

This Court May Examine the Entire Record, Including the Evidence, to Determine Whether Respondents' Constitutional Rights Claimed by Respondents Have Been Denied.

In the event that this court undertakes to determine the question whether the orders entered by the California Railroad Commission are unsupported by any evidence or are contrary to the evidence, it will be guided by the provisions of the California statute, relating to review of Commission's orders. Section 67 of the Public Utilities Act of California provides that, after the denial of an application for rehearing, "the applicant may apply to the Supreme Court of this state for a writ of certiorari or review * * * for the purpose of having the lawfulness of the original order or decision, or the order or de-

:ision on rehearing, inquired into and determined * * *. The review shall not be extended further than to determine whether the Commission has regularly pursued its authority including a determination of whether the order or decision under review violates any right of the petitioner under the Constitution of the United States or of the State of California."

In the leading case of *Pac. Tel. & Tel. Co. v. Eshelman*, 166 Cal. 640, 694, the Supreme Court of the State of California held:

> "This court has expressly held that the clause 'whether the tribunal has regularly pursued its authority' is the equivalent of 'whether it has exceeded its jurisdiction'."

In deciding the case of *Marin Water Co. v. Railroad Commission of the State of California*, 171 Cal. 706, 713, the California court held, in construing Section 67 of the Public Utilities Act:

> "There is also a provision excluding questions of fact from review. Notwithstanding this, however, the law remains that when a finding or conclusion of fact is based upon uncontradicted evidence its accuracy usually becomes a mere question of law and in that event the question may be reviewed if it goes to the jurisdiction * * *."

The California court affirmed this rule in deciding the case of *Allen v. Railroad Commission*, 179 Cal. 68, 74:

> "When the question, ever one of mixed law and fact, goes, as here, to the jurisdiction itself, * * * to say that the determination of the commission upon this matter is final and conclusive and is not subject to review, is the equivalent of denying to a petitioner a hearing upon a right carefully preserved to him by the language of Section 67 itself—a hearing and a determination of whether the order and decision under review 'violates any right of the petitioner under the constitution of the United States or of the state of California'." (Citing cases.)

Petitioners are not suggesting that the court review the evidence introduced before the Commission in these proceedings for the purpose of determining controverted questions of fact but are asking the court to review the evidence to determine whether respondents' contention is correct that there is *no* evidence to support the Commission's findings, decisions and orders, and whether there were "such arbitrary and capricious actions on the part of the Commission as to violate the due process clause of the Constitution."

This court has held that

> "While it is true that upon a writ of error to a state court we cannot review its decision upon pure questions of fact, but only upon questions of law bearing upon the Federal right set up by

the unsuccessful party, it equally is true that *we may examine the entire record*, including the evidence, if properly incorporated therein, to determine whether what purports to be a finding upon questions of fact is so involved with and dependent upon such questions of law as to be in substance and effect a decision of the latter."

Kansas City Southern Ry. v. Albers Comm. Co., 223 U. S. 573;

Washington ex rel O. R. & N. R. Co. v. Fairchild, 224 U. S. 510;

Florida E. C. R. Co. v. U. S. 234 U. S. 173;

I. C. C. v. At. & S. F. Ry. Co., 234 U. S. 293.

Counsel for petitioners argue, in their supplemental brief, pages 11 et seq., the questions whether "the Commission's findings on questions of public convenience and necessity were final and conclusive under the California law," and cite authorities of the Supreme Court of the State of California in support of the contention that such findings are conclusive. Petitioners, however, state on page 16 of their brief:

> "However, notwithstanding section 67 of the Public Utilities Act and its own prior decisions, the California court in the particular cases under review failed to follow the undoubted principle of law above set forth."

Then after quoting from the decision of the Supreme Court of the State of California rendered in this case, it is said on page 17 of the brief:

> "Thus, the state court has apparently rendered a decision contrary to those previously rendered and contrary to the principle followed by this honorable court. In this respect, we respectfully submit, the Supreme Court of California has erred."

Notwithstanding the previous decisions of the Supreme Court of the State of California, the decision rendered by it in the case at bar, construing the California statute, is controlling. No authorities need be cited in support of this elementary rule and that the construction placed upon the California statute by the highest court of that state is binding upon this court. The case of *N. Y. & Queens Gas Co. v. McCall*, 245 U. S. 345, cited by counsel for petitioners, on page 14 of their brief, supports this elementary rule.

The general rule may therefore be stated that this court will review the evidence, findings, decisions and orders of the California Commission to determine whether any of the rights of the respondents guaranteed by the Constitution of the United States have been impaired.

THE ORDERS OF THE CALIFORNIA COMMISSION VIOLATE THE DUE PROCESS CLAUSE OF THE CONSTITUTION BECAUSE THEY ARE ARBITRARY, NOT SUPPORTED BY ANY EVIDENCE, AND ARE CONTRARY TO THE EVIDENCE.

Any Power that the California Commission Might Lawfully have Exercised in Entering Its Orders Was a Limited Power and Could Not be Exercised Arbitrarily.

The immediate question for determination is whether there was substantial or any evidence, introduced before the Railroad State Commission, which supports its findings, decisions and orders.

> "The legal effect of evidence is a *question of law*. A finding without evidence is beyond the power of the Commission. An order based thereon is contrary to law and must in the language of the statute 'be set aside by a court of competent jurisdiction'."
>
> *L. & N. R. R. Co. v. I. C. C.*, 227 U. S. 88, 92;
> *I. C. C. v. Union Pacific R. Co.*, 222 U. S. 541;
> *Northern Pacific Ry. Co. v. I. C. C.*, 216 U. S. 538, 544.
>
> "The law remains that when a finding or conclusion of fact is based on uncontradicted evidence, its accuracy usually becomes a mere question of law, and in that event the question may be reviewed if it goes to the jurisdiction."
>
> *Marin Water Co. v. C. R. C.*, 171 Cal. 706, 713.

The Grounds Upon Which The California Commission Seeks To Support Its Orders.

The Commission seeks to support the orders entered by it upon two main grounds; viz.:

So far as the Atchison, Topeka & Santa Fe Railroad Company, and the Los Angeles & Salt Lake Railroad Company are concerned, by the finding, "present passenger facilities of the *Santa Fe* and *Salt Lake stations* are inadequate." (Commission's Order Trans. 80.)

"As to the *Southern Pacific* depot, its continued use does not conform to any satisfactory plan for the elimination of the grade crossings on Alameda Street." (Commission's Order Trans. 140.)

The map incorporated in the brief filed by petitioners for writ of certiorari graphically shows the location of the three steam roads, including their main lines entering Los Angeles and their passenger terminal and other facilities. The lines of the Santa Fe enter from the north and proceed along the westerly bank of the Los Angeles River, reaching the passenger terminal at about the center of the diagram, and extending thence southerly and across the Los Angeles River. The tracks of this road, shown on the diagram, form a portion of its main line over which interstate traffic, both freight and passenger, is transported from and to eastern

destinations and from and to San Diego and other points in Southern California. The line of the Los Angeles & Salt Lake Railroad Company extends in a general northerly and southerly direction along the east bank of the Los Angeles River, and likewise forms a portion of the main line of its road over which interstate traffic is moved from and to eastern destinations and points in Southern California. These lines are remote from the main line of the Southern Pacific Company, operated northerly and southerly along Alameda Street to and through its passenger terminal shown on the diagram, and over which interstate traffic, both freight and passenger, is handled to points located northerly, southerly, easterly and westerly from its passenger station. It therefore appears that the Santa Fe and Salt Lake lines are in nowise concerned with the operation of grade crossings, except those on either bank of the river, and that the Southern Pacific Company is in nowise concerned with the grade crossings other than those on Alameda Street.

The interests of the three steam lines involved in the Commission's order must necessarily be separately considered in order to determine whether their constitutional rights have been impaired.

The Commission's Orders Cannot Be Supported by Finding That the Station Buildings of the Santa Fe and Salt Lake Lines Are Inadequate in View of the Undisputed Fact That Their Passenger Terminal Facilities Are Otherwise Adequate.

PASSENGER FACILITIES OF ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

The *uncontradicted evidence* shows that the passenger terminal facilities of the Santa Fe are adequate not only to provide for its own immediate and *future* needs but are also adequate to accommodate the traffic of all the steam lines, operating into a Union Terminal, which might be erected upon and operated in connection with its existing passenger facilities. The chief engineer of the California Railroad Commission in a report made at the request of the Commission, C. R. C. Exhibit No. 1, at page 290 stated that "the present site of the Santa Fe station and freight yards on the west bank of the river between First and Sixth Streets also appeared to offer a suitable location for a union passenger terminal, and we have made studies to show what is possible in this location. * * * "

At pages 291 and 292 of C. R. C. Exhibit No. 1, the Commission sets forth the advantages of the

existing Santa Fe passenger terminal facilities for a union station:

> "Adequate space is provided for station tracks; economical operation is possible; connection to Pacific Electric lines to the east is possible,—these are lines of heaviest traffic; no grade crossings of railroads are introduced; no changes in streets are necessary; a through terminal is provided; least expense for viaducts and trackage is required; least new capital is required; loss of property values is small; least amount of land is required for railroad purposes; lands now held for railroad use could be released; open door is made for future roads entering Los Angeles; railroads would be confined to natural channel, the banks of the Los Angeles River; this station would automatically do away with all passenger operation on Alameda Street. * * * All of the project is on the ground, as far as the steam roads are concerned. The approaches are on good grades with little or no curvature and with maintenance less than for elevated structures. No streets are crossed at grade by main line tracks."

It is significant that there is no finding made by the Commission in either of its orders that the terminal facilities to the Atchison, Topeka & Santa Fe at Los Angeles are inadequate, the only finding being that the passenger station *building* itself is inadequate and unsatisfactory and as a matter fact no such finding could have been made in view of the *uncontradicted evidence* contained in the engineer-

ing report made by the Commission's engineers. (California Railroad Commission Exhibit No. 1,) to which reference has been made.

Respondents contend that as a *matter of law* under the *undisputed facts* and in the absence of a finding that the terminal facilities are inadequate, it is beyond the power of the Commission to order the Atchison, Topeka & Santa Fe to abandon its existing passenger terminal facilities possessing these great advantages, and join in the expenditure of $36,000,000 where, by the expenditure of approximately one-half million dollars a handsome, adequate, safe, convenient and commodious station building could be erected thereby rounding out and completing a passenger terminal adequate and convenient for the needs not only of its own lines but all other lines serving the City of Los Angeles and any future lines entering that city.

Passenger Facilities of Los Angeles & Salt Lake Railroad Company

The passenger station *building* of the Los Angeles & Salt Lake Railroad Company is confessedly inadequate but the uncontradicted evidence shows that this line owns sufficient property and that its facilities, with the exception of its *station building*, are adequate to handle all of its passenger business safely, expeditiously, and economically.

By an agreement executed between Southern Pacific Railroad Company and Los Angeles & Salt Lake Railroad Company on the 18th day of July, 1917, Southern Pacific-Salt Lake Exhibit No. 1 (Tr. p. 573) provision is made for the joint use of the existing Southern Pacific station building at Los Angeles by the Los Angeles & Salt Lake Line, which would provide the Salt Lake Line with a modern, commodious and convenient station of sufficient capacity to handle its entire passenger traffic for more than twenty years to come.

The Southern Pacific and Salt Lake Lines made application (Tr. p. 31) to the California Commission for permission to jointly use and operate the existing Southern Pacific station, prior to the time the Interstate Commerce Commission had been vested, by the recent amendments to the Interstate Commerce Act, with exclusive jurisdiction to grant such applications. This application, which would have afforded the Salt Lake Line a modern, convenient and safe passenger station, was denied by the Commission.

The Commission's Orders Violate the Due Process Clause of the Constitution in Requiring the Santa Fe and Salt Lake Lines to Join in the Expense of Providing a Union Passenger Terminal in Order that the Grade Crossings on Alameda Street May Be Eliminated.

It has already been shown that both the Santa Fe and the Salt Lake Lines own sufficient property and that their facilities are adequate to handle all of their passenger business at Los Angeles safely, expeditiously, and economically, with the exception of the passenger station buildings themselves; that by the expenditure of comparatively small sums of money modern, convenient, safe and commodious station buildings may be provided by each of these lines.

The Commission's orders are predicated primarily upon the finding that a Union Passenger Station is necessary in order to eliminate grade crossings on *Alameda Street*. (Tr. p. 144.)

The uncontradicted evidence of the Commission's engineering experts shows that, with the exception of the grade crossings along Alameda Street, all other crossings can be eliminated without establishing a Union Station, and that such a station would not facilitate the elimination of any of the river crossings, but that the elimination of these crossings would be made in precisely the same manner whether a Union Station was or was not established.

The Commission's orders compel the Santa Fe and Salt Lake Lines to join in the expense of erecting and maintaining a Union Passenger Station at the cost of millions of dollars solely for the reason that the petitioner believes that this will be an easy and ready way to remove the Southern Pacific Company's trains from *Alameda Street*, over which the Santa Fe and Salt Lake Lines have no right to operate and never have and do not now operate any of their trains.

The Commission's orders are not supported by the finding that the existing passenger station *buildings* of the Santa Fe and Salt Lake lines are inadequate for the reason that the *uncontradicted* evidence shows that the passenger station facilities of these lines, with the exception of the buildings themselves, are fully adequate to meet the public requirements. Under these facts the California Commission only has the power to compel these carriers to erect suitable structures at their present sites.

Therefore, the necessary force and effect of the orders is to require the Santa Fe and Salt Lake Lines to incur an expense of millions of dollars so that their rival, the Southern Pacific Company, may eliminate grade crossings, exclusively used in the operation of its trains; and the Santa Fe and Salt Lake Companies are to that extent deprived of their property without due process of law, denied the

equal protection of the law, and their property is taken for public use without compensation, in contravention of and repugnant to provisions of the Constitution of the State of California and of the Fourteenth Amendment to the Constitution of the United States.

The Existing Passenger Terminal Facilities of the Southern Pacific Company Are Fully Adequate to Serve the Public Convenience and Necessity and to Safeguard the Interests of the Traveling Public and its Employees and the Commission's Orders, Requiring the Southern Pacific Company to Join in the Expense of Erecting a Union Passenger Terminal, Violate the Constitutional Rights of That Company.

It is significant that there is no finding, conclusion or order to the effect that the existing passenger facilities of the Southern Pacific Company, at Los Angeles, are in any wise inadequate or insufficient to promote the security, convenience, or necessity of the public. Such a finding or conclusion could not have been made or reached, for the reason that the *uncontradicted evidence* proves conclusively that the existing passenger terminal facilities of the Southern Pacific Company are modern, commodious, convenient, safe and adequate to accommodate all passenger trains, not only of the Southern Pacific Company but of the Salt Lake and Santa Fe companies as well for a period of at least the next twenty years. The passenger terminal of the South-

ern Pacific Company was, after formal hearing, constructed in 1915 under an express order of the Railroad Commission of the State of California, which was predicated upon the finding that "the structure to be erected under these plans will be efficient and ample to provide for the probable passenger traffic coming to and departing from a city several times the present size of Los Angeles." *In re Application Southern Pacific Company*, 3 C. R. C. 927, 929. (Order set forth in Appendix.)

The Commission's engineer testified in the present proceedings that: "The present station is well designed and is adequate and suitable for its purpose, * * * " that the "site is large enough for some time to come and is sufficient for 140 trains in the future, * * * being based on a twenty year esitmate." The evidence further shows without conflict that the present station facilities of Southern Pacific Company are modern, convenient and are adequate to provide for the convenience of the public for a period of twenty years, making allowances for all possible future "increase of traffic." (C. R. C. Exhibit No. 1, pp. 235, 337.)

Exhibits Nos. 8 (a) to 8 (i), inclusive, introduced by Southern Pacific and Salt Lake companies, are the drawings of the plans and specifications of the present station, showing the complete depot and track lay-out, size of rooms, elevations, etc., and bear out the testimony of the engi-

neers of the California Railroad Commission set forth in California Railroad Commission Exhibit No. 1, page 235, that "*the present station is well designed and is adequate and suitable for its purpose.*"

The Commission's engineers further testified that the existing Southern Pacific station, including the depot itself, and track lay-out, "is large enough for some time to come," and that "it is sufficient for 150 trains in the future * * * being based on a twenty year estimate." This evidence *given by the engineers of the California Railroad Commission* is not only uncontradicted but is fully corroborated by the testimony of the executive and operating officials of the carriers.

The testimony of Mr. T. H. Williams, Assistant General Manager Southern Pacific Company (Tr. 474-6), and Mr. W. H. Comstock, General Manager of the Los Angeles & Salt Lake Line (Tr. 485-9, and S. P. & S. L. Exhibits 29 and 30) is uncontradicted and supports the unqualified statement hereinbefore made that the existing passenger terminal facilities of Southern Pacific Company are fully adequate to meet the requirements not only of the Southern Pacific Company but of all the steam lines operating into Los Angeles at the present time and to provide facilities for any anticipated increase in traffic which may occur within the next twenty years.

"Among the principal advantages of the site of the present Southern Pacific station for a union terminal * * *" set forth by the commission's technical engineering experts at page 284 of California Railroad Commission's Exhibit No. 1, are:

> "It is possible to provide a union L. C. L. freight station at the Santa Fe site, which is the best site available for this purpose."
>
> "It is possible to segregate passengers and freight on different sides of the river."
>
> "It is convenient to business, hotel and shopping districts."
>
> "Use is made of present facilities, cost of which is already paid."
>
> "Elimination of all grade crossings on Seventh, San Pedro and Aliso Streets for through Pacific Electric trains is provided for."
>
> "Pacific Electric traffic south of Los Angeles is given access to the union station."
>
> "Loss of property values is small, if there is any."
>
> "Passengers are not obliged to pass through industrial district but are carried over it."
>
> "The Southern Pacific site has a number of advantages, of which possibly the most important is the fact that it makes use of existing facilities whose cost is already paid for. * * * Our estimate of the present market value of the land is approximately $1,310,348.00 and of all Southern Pacific holdings in this block, $2,101,128.00."

See also testimony of Mr. Shoup (Tr. pp. 490-534).

In the light of this *uncontradicted evidence* the Commission could not lawfully have made a finding to the effect that the passenger terminal facilities of the Southern Pacific Company at the City of Los Angeles are inadequate to serve the public convenience and necessity.

It, therefore, can not be held, under the uncontradicted evidence, that the entire passenger terminal facilities of the Southern Pacific Company are at all improper, inadequate or insufficient to promote the security, convenience, and necessity of the public. It must, therefore, be held that the Commission had no jurisdiction to render its decisions and make the orders complained of, and that the orders must be declared void and set aside.

Louisville & Nashville Railroad Co. v. I. C. C., 227 U. S. 88, 93;

Interstate Commerce Commission v. Northern Pacific Railway Company, 216 U. S. 538, 544.

The Supreme Court of the United States has definitely set this question at rest in the case of *O. R. & N. Co. v. Fairchild*, 224 U. S. 510, where it sustained the contentions of the carriers involved in that proceeding that the Railroad Commission of the State of Oregon had no jurisdiction, power, or authority to order an extension of facilities because the evidence did not show, and the Commission

could not therefore find as a jurisdictional prerequisite, that public convenience and necessity required that the extensions be made.

The Commission's Orders Requiring the Southern Pacific Company to Join in the Expense of Erecting and Operating a Union Terminal Depot Remote From Its Present Passenger Terminal Can Not Be Sustained, Upon the Ground That Its Existing Facilities Do Not Conform to the Commission's Plan For Eliminating Grade Crossings.

It must be borne in mind that all of the carriers have consistently conceded the necessity of eliminating grade crossings in the city of Los Angeles, the Santa Fe and Salt Lake lines, where they cross grades along the westerly and easterly banks of the Los Angeles River, and the Southern Pacific Company, where its main line traverses Alameda Street.

The court's attention is further directed to the fact that the evidence does not show that it is necessary to provide a unified passenger terminal in order to eliminate grade crossings.

The chief engineer of the California Railroad Commission testified that plans for the elimination of the so-called river crossings (in which the Salt Lake and Santa Fe lines are alone interested) may be eliminated irrespective of where a union depot may be located (Tran. 432). The fact, therefore, appears that these river grade crossings may be

eliminated under present conditions irrespective of whether a union passenger terminal is established (Tr. 451).

The *uncontradicted evidence* given by both the Commission's and carriers' engineers shows that all the grade crossings where the Santa Fe or Salt Lake lines are involved may be eliminated without establishing a union station. And, further, that all these grade crossings would receive the same treatment in the elimination thereof whether any union passenger station were established or not.

Complete grade eliminations along Alameda Street may also be accomplished without the necessity of establishing a union passenger station. The *uncontradicted evidence* of the carriers' engineers shows that the final and ultimate plan, outlined by the carriers, by the agreement attached to the application made by the Southern Pacific and Salt Lake lines, for permission to establish a union depot at the present site of the Southern Pacific station, filed prior to the adoption of the amendments of 1920, would reduce the number of grade crossing movements from 89 on the Salt Lake, 306 on the Santa Fe, 1408 on the Southern Pacific, and 22,950 on the Pacific Electric daily at the present time, or a total of 24,753, to absolutely zero (Tran. 329, 340). The 22,950 grade crossing movements made by Pacific Electric trains daily at the present time,

would not be eliminated, if the Commission's orders were carried into effect but would be entirely eliminated under the carriers' plans.

The Commission has made no finding and has reached no conclusion that a union passenger terminal is necessary in Los Angeles for any other purpose than to enable an order to be entered eliminating grade crossings; in fact, the Commission states, in its original order:

> "The principal arguments against the establishment of a union station are:
>
> "(1) Los Angeles is not a through station. Practically all trains entering the city terminate there, and it is there that the majority of the passengers reach their destination. Only approximately 15 per cent. of the total number of passengers transfer from one station to another.
>
> "(2) The first cost of any adequate union passenger terminal will be high and the saving in operating expenses will not alone warrant the resulting increase in fixed charges."

It may be remarked that the approximation of 15% of through passengers made by the Commission is the highest approximation made; the carriers' evidence showing that a careful check disclosed only twelve out of every ten thousand passengers would avail themselves of facilities afforded by a union station (Trans. 351).

It must be held that any finding made by the Commission that public convenience and necessity requires the erection of a union station at the city of Los Angeles is wholly unsupported by the evidence, and that the attempt of the Commission to justify its orders upon the grounds merely that the passenger station buildings of the Santa Fe and Salt Lake lines are inadequate to serve the public convenience and necessity, and that the existing depot of the Southern Pacific Company * * * does not conform to the plan for the elimination of said dangerous grade crossing * * * cannot avail.

The Supreme Court of the State of California, as has hereinbefore been suggested, said "there is no merit in this contention * * * that the establishment of a union terminal depot was an indispensable element in accomplishing the elimination of such grade crossings * * * and that * * * we can conceive of no indispensable relation between the elimination of grade crossings and the establishment of a union depot facilities" (Tr. 233).

This rule announced by the Supreme Court of the State of California, in construing the state statute, under the facts of this case, is, under the elementary rules and authorities, to which we have adverted, controlling upon this court.

Counsel for petitioners in their supplemental brief, page 18, cite the case of *Erie Railroad v.*

Board of Public Utility Commissioners, 254 U. S. 394, in support of the contention there made that the power of the state is supreme to protect the public in its use of streets, where such power conflicts with the operation of interstate carriers.

This case is not pertinent for the reason that the carriers are not resisting the elimination of grade crossings, and because, as above suggested, the Supreme Court of the State of California has expressly held in this case, construing the state statutes, that there is no indispensable relation between the elimination of grade crossings and the establishment of a union depot.

The Commission's orders are, therefore, shown to be repugnant to the provisions of the Fourteenth Amendment of the Constitution of the United States and must be held to be void.

THE DECISIONS AND ORDERS COMPLAINED OF TAKE THE PROPERTY OF RESPONDENTS FOR PUBLIC USE WITHOUT COMPENSATION AND DEPRIVE THEM OF THE PROPERTY WITHOUT DUE PROCESS OF LAW AND DENY RESPONDENTS THE EQUAL PROTECTION OF THE LAW IN CONTRAVENTION OF THE PROVISIONS OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

We have already referred to the evidence introduced before the Commission by both the engineers of the California Railroad Commission and the executive, operating and engineering officials of the carriers relating to the adequacy of the passenger terminal facilities of the three steam lines involved in the order.

The Commission's decisions and orders require the carriers to abandon large areas of terminal land acquired for the express purpose of handling the traffic in the City of Los Angeles, to "destroy and scrap facilities" of a value of several millions of dollars, to permit the joint use of facilities by rival carriers, *but no provision is made in the decisions and orders for reimbursement to any of the petitioners for the inevitable losses which they will sustain by scrapping their facilities, devoting their lands and facilities to the partial use of their rivals or for the loss of property values which they will inevitably sustain.*

The question for immediate determination is whether the Commission may in the face of the *uncontradicted evidence* to which we have referred "subject the property devoted by its owners to a public use, to another public use, or to the same public use by its rivals * * *" without first making compensation for the loss of properties abandoned and scrapped, and for the use of such properties as may be jointly used by rival carriers.

Irrespective of the limitations placed upon the power granted to the Commission by the Public Utilities Act, especially section 41 thereof, which expressly provides that where after a hearing the Commission finds that public convenience and necessity requires the use by one public utility of the tracks or other equipment or any part thereof belonging to another public utility, the Commission shall provide "prior to such use a fair and just compensation for damages suffered," the Fourteenth Amendment to the Constitution of the United States guarantees to each of these petitioners the right to have compensation made to them before property or facilities owned by them are required to be scrapped, abandoned or devoted to the use of present and prospective rivals.

> *Pacific Telephone & Telegraph Co. v. Eshelman*, 166 Cal. 640, 662-3.

Likewise, the constitutional rights of a utility are impaired when under the facts of a case such as this, it is shown that the existing facilities of a utility are adequate to fully meet its statutory and common law obligations to the public and its employees, an order is entered requiring the utility to expend millions of dollars to provide a "monumental gateway" to satisfy the "civic pride * * * in a tourist center * * *."

O. R. & N. Co. v. Fairchild, 224 U. S. 510.

In considering "the desirability of a union passenger terminal" it is said at page 247 of the California Railroad Commission Exhibit No. 1, that:

> "A railroad passenger terminal is essentially a city matter; it is the main entrance to, and the main exit from, every important city. City pride and what might be called the advertising aspect of a fitting city entrance are, therefore, essential factors in the consideration of any important passenger terminal."

The Commission's experts supported the respondents' contention by reciting in their report immediately following the foregoing quoted paragraph that,

> "In not a single instance of monumental passenger terminal construction in recent years can it be said that the cost of the station, considered from the railroad operating viewpoint alone, is justifiable as a sustaining investment."

Mr. Sachse further testified that:

> "I did not say in my report, and I am not by any means of the opinion, never was and never will be that this thing (Union Passenger Terminal) is desirable if the city bears the cost * * *" (Trans. 436).

"I am still of the opinion" (expressed in C. R. C. Exhibit No. 1, at page 247), that: "In not a single instance of monumental passenger terminal construction in recent years can it be said that the cost of the station, considered from the railroad operating viewpoint alone, is justified as a sustaining investment" (Tr. 433).

During the course of the hearing the Commission plainly indicated that the carriers would be required to bear the entire cost of erecting this "monumental gateway" which, according to the revised estimate of the Engineering Conference, set forth in the table (Tr. 94) ranges from $25,396,633 to $45,092,104.

At page 454 of C. R. C. Exhibit No. 1, it is said:

> "*The establishment of a union passenger terminal as recommended by us will be serious in its effect on the Southern Pacific.* The site of the depot yard cutting across Alameda Street, as it does, isolates the present less-than-carload freight station, and the establishment of a coach yard at the site of the present

> Southern Pacific main freight yard will force the construction of a new yard. * * * The construction of a connecting track between the depot yard of the union passenger station and the proposed site of the coach yard will make it impossible to handle the cars in and out of the freight station and will necessitate moving the freight station elsewhere."

The Commission's expert testified that it was absolutely essential that this existing facility of the Southern Pacific Company be abandoned by that line in order that it might be used as a coach yard by all carriers entering and using the proposed Plaza union depot. Yet no *provision is made in the Commissions decisions and orders providing for compensation to be paid the Southern Pacific Company for the loss of this facility or for the joint use of this facility by its rivals.*

This statement is true with reference to the many facilities now owned and operated by respondents at their passenger terminals at Los Angeles. The Commission's decisions and orders provide for the abandonment of large areas of their terminals, the scrapping of facilities erected at a cost of millions of dollars and the joint use of portions of their remaining facilities by rival carriers without any provision being made to compensate respondents for the direct losses which they will sustain, or for the amounts they are entitled to receive by virtue of their constitutional and statutory rights for per-

mitting rival lines to use their facilities. The Commission's decisions and orders, therefore, requiring the abandonment of these properties without making provision for compensation to respondents, and in requiring respondents to join in the expense of erecting another passenger station and additional terminal facilities in the City of Los Angeles, are unreasonable, arbitrary and unlawful because they transgress the constitutional provisions against taking private property for public use without compensation. The power sought to be exercised goes not merely to the regulation of respondents and their business but passes beyond proper regulation and amounts to a taking of the property of respondents and the orders are therefore referable not to the police power, but to the power of eminent domain.

Irrespective of public convenience or public necessity, there is no justification for the taking of respondents' property for the purposes proposed and depriving respondents of the use thereof without having first made provision for, and making payment to respondents of, adequate compensation.

Pac. Telephone & Telegraph Co. v. Eshelman, 166 Cal. 640, 662-3;

O. R. & N. Co. v. Fairchild, 224 U. S. 510.

In deciding the case of *Pacific Telephone & Telegraph Co. v. Eshelman*, supra (page 663), the California court held that there were certain fundamental principles which govern and that

> "The first of these is that this (police) power goes merely to the *regulation* of the public utility, and that when an order passes beyond proper regulation it amounts to a taking of the property and the order is then referable not to the police power but to the power of eminent domain * * *. Nor is it of consequence that the law or order be in terms and in form regulatory, if, in effect, it is a taking of property or a deprivation of the use of property within the meaning of the Constitution. No public convenience, no public necessity, however urgent, will justify such a taking."

The Court further held (page 664):

> "Another principle, quite as important and quite as fundamental, is that 'taking' of property within the meaning of the Constitution is not restricted to a mere change of physical possession, but includes a permanent or temporary deprivation of the owner of its use."

The court further announced the principle that the inferiority of service (although no such inference or assumption or conclusion can be reached under the facts of this case) actually rendered is not, of course, a justification for the taking of property and that "no necessity, however urgent, justifies a taking of property without compensation." (*Pac. Tel. & Tel. Co. v. Eshelman*, 166 Cal. 668-669.)

In the light of this decision and especially in view of the fact that the evidence before the Commission did not show or prove that the existing facilities of respondents are inadequate to fully serve the convenience of the public and to fully provide for the safety of the public and the employees of petitioners, it must be held that the Commission has not regularly pursued its authority and has exceeded its powers, that its orders are not properly referable to the police powers but to the powers of eminent domain and that in attempting to provide a "monumental gateway" possessing unusual "aesthetic possibilities" to satisfy the "civic pride" of this great "tourist city" the Commission has entered decisions and orders which are repugnant to and in contravention of the Fourteenth Amendment to the Constitution of the United States, and which deny respondents the equal protection of the law and deprive each of them of their property without due process of law and that the decisions and orders should be vacated, annulled and set aside.

The cases, by the courts of other states, cited by petitioners' counsel in opposition to this contention are easily distinguishable under the facts of those particular cases, and because of the different provisions found in the statutes of these states.

In the case of *Railroad Commission v. North Alabama Ry.*, cited at page 21 of petitioners' brief, as is shown by the excerpt, "the railroad may lose the

use of the old building or the use of the lot as a location for its passenger depot." Here the Southern Pacific Company will lose a depot, built under the order of the California Railroad Commission, and which the uncontradicted evidence shows, there being no finding to the contrary, is modern, convenient and adequate to serve the needs of the public.

The statute upon which the Commission rested its decision in the case of *Railroad Commission v. Ala. Gt. So. Ry. Co.*, reviewed by counsel in their brief, expressly repuired the railroad company to join in the use of union passenger stations. There is no such provision in the California law; in fact, "union depots are not mentioned therein."

The same observation may be made with reference to the cases of *State of Texas v. St. L. & So. W. Ry.* and *Dewey v. At. Coast Line Ry.*, cited upon page 22 of their brief.

The facts of the cases of *Gulf & S. F. Ry. Co. v. State*, and *Mayor, etc., of Worcester v. Norwich, etc., Ry.*, are essentially different from the facts in the case at bar.

Many state cases might be cited in opposition to those upon which counsel for petitioner relies, but we may rest content by referring the court to the case of *State ex rel. Wabash Ry. Co. v. Public Service Commission*, 271 Mo. Rep. 155, in which

it was held that where the evidence before the Commission does not tend to prove any defect or inadequacy in the present passenger depot, which cannot be corrected by repairs, improvement or enlargement, an order of the Commission, requiring the railroad company to erect a new depot in a new place, is unreasonable.

The Commission's Decisions and Orders Are in Contravention of and Repugnant to the Provisions of Section 10 of Article 1 of the Constitution of the United States by Reason of the Fact that These Decisions and Orders Will, if Made Effective, Impair the Contract Made Between the State of California and Southern Pacific Railroad Company, and the Contract Made and Entered Into Between the City of Los Angeles and Southern Pacific Railroad Company, Granting a Franchise Authorizing the Construction and Operation of Its Railroad on and Along Alameda Street in the City of Los Angeles.

The State of California has heretofore, as is shown by the record made before the Commission, entered into a contract with the Southern Pacific Railroad Company, the lessor of Southern Pacific Company, whereby it was granted the right to construct and operate its line of railroad from San Francisco to and through the City of Los Angeles, this line having heretofore been constructed and now being operated in the City of Los Angeles along Alameda Street and other streets.

This contract is evidenced by the grant made by the State of California to the Southern Pacific Company, the grant having heretofore been accepted by the Southern Pacific Railroad Company by filing its articles of incorporation and constructing its railroad commencing in the city and county of San Francisco, State of California, and running through the City of Los Angeles to San Pedro, and from, in and through the City of Los Angeles to the Colorado River, and other places in the State of California.

Likewise, the City of Los Angeles has, under the laws of the State of California and the charter of the City of Los Angeles, heretofore granted to Southern Pacific Railroad Company, the predecessor in interest of Southern Pacific Railroad Company, the lessor of Southern Pacific Company, by ordinance a franchise to construct, maintain and operate its railroad along Alameda Street in the City of Los Angeles, and the grant has been heretofore accepted by the Southern Pacific Railroad Company by constructing and operating, directly or through its lessee Southern Pacific Company, its railroad commencing in the City and County of San Francisco and running thence to and through the City of Los Angeles to the City of San Pedro, and from, in and through the City of Los Angeles to the Colorado River and other places in the State of California.

Paragraph 14 of the final order entered by the Commission (Tr. 150, 151) provides:

> "That upon the completion of the union passenger terminal, as required by this order, the defendant, Southern Pacific Company, shall discontinue the operation of trains on Alameda Street, between College Street and Fifteenth Street, inclusive, in the City of Los Angeles, except for the purpose of local freight switching, which may be carried on during limited hours to be hereafter fixed by supplemental order."

The order denies Southern Pacific Company and Southern Pacific Railroad Company the right to continue the operation of their trains along Alameda Street in the City of Los Angeles, except for the purpose of industrial switching, and if this order becomes effective the contract between the State of California and these petitioners and the contract between the City of Los Angeles and these petitioners, granting petitioners the franchises and right of operating its main line trains over this street, will be impaired and abrogated and these respondents will be deprived of these rights in violation of Section 10 of Article I of the Constitution of the United States and their property will be taken for public use without compensation, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

California State Telegraph Co. v. Alta Telegraph Co., 22 Cal. 398, 422-3;

New Orleans Water Works Co. v. Rivers, 115 U. S. 674;

Tammany Water Works v. N. O. Water Works, 120 U. S. 64, 67;

City of St. Louis v. W. U. Tel. Co., 63 Fed. 68, 70;

New York Electric Lines v. Empire City Subway, 235 U. S. 179, 192-3;

Russel v. Sebastian, 233, U. S. 195, 204;

Baltimore, etc. Co. v. Baltimore, 64 Fed. 153, 159-60;

Pacific Telephone & Telegraph Co. v. Eshelman, 166 Cal. 640.

The case of the *Denver & Rio Grande v. Denver*, 250 U. S. 242, cited by petitioner's counsel in opposition to this contention is not, as contended by counsel, "squarely in point."

In that case a carrier had merely been directed to abandon a small portion of a spur track; whereas in this case the Southern Pacific Company is required to abandon three miles of its main line used largely for the handling of interstate traffic.

CONCLUSION.

It is submitted that this court should only review the question actually decided by the State Court but that in the event the court concludes that it should review other questions than those decided by the State Court it should hold that the orders entered by the Railroad Commission of the State of California violate respondents' constitutional rights for the reasons, among others:

That there was no evidence before the Commission to sustain the finding that the passenger station facilities of respondents are inadequate or that the security or convenience of the public or respondent's employees necessitate such consolidation, abandonment or extension of facilities, or construction of such a union passenger terminal, but that, on the contrary, the *uncontradicted evidence* proves that the existing passenger terminal facilities of respondents at Los Angeles and the consolidation of facilities of the Southern Pacific Company and Salt Lake Line proposed by these respondents provide modern, commodious, adequate and safe facilities to accommodate all passenger traffic which may be carried by the respondents for at least the next twenty years.

That the decisions and orders complained of deprive respondents of their property without due process of law and take their property for public

use without compensation, in contravention of and repugnant to the provisions of the Fourteenth Amendment to the Constitution of the United States for the reason that no provision is made to pay to the respondents compensation for the loss of the facilities which must be necessarily abandoned, or for the use by their rivals of such facilities as may be required under the plan which the Commission orders the carriers to put into effect.

That the requirements of the orders compelling the Atchison, Topeka & Santa Fe and Los Angeles & Salt Lake lines to join in the expense of erecting and maintaining a union passenger terminal in order to effect the elimination of the grade crossings on Alameda Street over which these respondents have no right to operate and never have operated any of their trains deprive these respondents of their property without due process of law and deny them the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

That the requirements of the orders, compelling the Southern Pacific Company and Southern Pacific Railroad Company to join in the expense of erecting and maintaining a union passenger terminal for the reason that the existing depot of these respondents does not conform to the plan for the elimination of grade crossings in the City of Los

Angeles, will deprive these respondents of their property without due process of law and deprive them of the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

That likewise Southern Pacific Company and Southern Pacific Railroad Company will necessarily be deprived of valuable franchise rights and privileges by being compelled to discontinue the operation of trains along Alameda Street in the City of Los Angeles, and that the decisions and orders of the Commission are in these particulars in contravention of and repugnant to the provisions of Section 10 of Article I of the Constitution of the United States, and by reason of failure of the Commission to make provision for payment to Southern Pacific Company and Southern Pacific Railroad Company of compensation for the loss of these valuable franchise rights the Commission's decisions and orders are in contravention of and repugnant to the provisions of the Fourteenth Amendment of the Constitution of the United States.

It is further submitted that in reviewing the question decided by the Supreme Court of the State of California this court should hold:

That the laws of the State of California under which the Railroad Commission of that state proceeded are in contravention of and repugnant to the provisions of Section 8 of Article I of the Constitution of the United States for the reason that the sole and exclusive power to enter orders such as were entered by the California Commission has been vested in the Interstate Commerce Commission by the amendments made to the Interstate Commerce Act in 1920, and that these amendments have divested the California Commission of jurisdiction to render or enforce the decisions and orders of which complaint is made.

That the orders of the California Commission directly interfere with and burden interstate commerce in violation of the commerce clause of the Federal Constitution.

Finally, that the history of Congressional legislation enacted pursuant to the commerce clause of the Federal Constitution regulating the rights and practices of interstate carriers shows that the Congress, because of the growth and development of the national commerce, has found it necessary in "unequivocal language" to declare a national railroad policy and has enacted amendments to the Interstate Commerce Act, covering every detail of the subject so completely and in such a manner as to manifest its intention to exercise its constitu-

tional authority "in order to maintain an adequate railroad service for the people of the United States."

The wisdom of this Congressional policy is forcefully exemplified in the instant case.

The mandate of the amended Federal statute requiring the Commission to establish and adjust rates of interstate carriers as a whole, or in groups or territories, so that such carriers *shall* earn a "net railway operating income, equal as nearly as may be, to a fair return upon the aggregate value of the railway property * * *," and Section 5 of the amended act requiring the Commission as soon as practicable to "prepare and adopt a plan for the consolidation of the railway properties of the continental United States into a limited number of systems" (which the Interstate Commerce Commission has under consideration at the present time), and the other provisions of the amended statute providing for the comprehensive regulation of interstate carriers, would be nullified and the Interstate Commerce Commission would be rendered impotent to discharge these duties in the event the forty-eight state commissions retained jurisdiction or were held to possess concurrent jurisdiction with the Interstate Commerce Commission to require interstate carriers to abandon facili-

ties, extend their lines, and consolidate their terminal facilities at the principal cities in the several states.

Unless it be held in conformity with the decisions of this court that the jurisdiction of the State Commission to order carriers "subject to the jurisdiction of the Interstate Commerce Commission" to extend and abandon their lines and consolidate their terminal facilities and operate such facilities jointly, has been subordinated to the jurisdiction of the Federal Commission the inevitable result would be not only financial ruin to the carriers but carriers would be unable financially to provide adequate facilities for properly handling the nation's traffic. It is apparent that the amendments to the Interstate Commerce Act were adopted because Congress in accordance with its consistent policy recognized the necessity for the essential unity of the physical, economical and financial questions relating to the business of the interstate carriers, and the necessity of protecting railroad credit not only by providing reasonable rates of return but also by the actual control of capital expenditures and the desirability of securing the advantages of the unified operation of railroads and the minimum loss by competition, with due regard to the cost of service and the financial ability of the carriers concerned, and has enlarged the powers

of the Commission by vesting the Commission with authority to order the joint use of terminals, the making of extensions, and the abandonment of the lines and facilities of interstate carriers so that the Commission may promptly discharge the Congressional mandate of consolidating existing railroads and of protecting interstate commerce from being unduly burdened by the action of state authorities.

Concurrent exercise of such power and jurisdiction by the Federal and state commissions would result in conflicting orders and would seriously, if not entirely, operate to nullify the Federal policy which the Interstate Commerce Commission is empowered and directed to carry into effect.

> "It is unnecessary to repeat what has frequently been said by this court with respect to the complete and paramount character of the power confided to Congress to regulate commerce among the several states. It is of the essence of this power that, where it exists, it dominates. Interstate trade was not left to be destroyed or impeded by the rivalries of local governments."
>
> *Houston E. & W. Texas R. Co. v. U. S.*, supra.

By undertaking to usurp the jurisdiction now vested exclusively in the Interstate Commerce Commission and by entering orders which directly bur-

den interstate commerce the Railroad Commission of California has entered orders repugnant to and in contravention of the provisions of Section 8 of Article I of the Constitution of the United States.

And it is respectfully submitted that the judgment of the Supreme Court of the State of California should be affirmed and the writs dismissed.

Respectfully submitted,

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WM. R. STANSBURY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1923

No. 283

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA
vs.
SOUTHERN PACIFIC COMPANY, *et al.*

CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

BRIEF FILED AMICI CURIAE ON BEHALF OF THE NATIONAL ASSOCIATION OF RAILWAY AND UTILITIES COMMISSIONERS AND OF THE REGULATORY COMMISSIONS OF TWENTY-NINE STATES.

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STATEMENT OF FACTS

The Railroad Commission of the State of California on December 6, 1921, made an order requiring the re-

spondent and two other carriers by railroad to construct in Los Angeles, California, a union passenger station (transcript of record page 131). Upon appeal by the railroads affected by the order, the Supreme Court of California held that "full power and authority over the matter of union terminal depot facilities of the railroads largely engaged in interstate commerce * * * has been vested in the Interstate Commerce Commission under the terms of said amendatory act of 1920 (the Transportation Act) and that by virtue thereof the Railroad Commission of California * * * has been divested of the power, authority and jurisdiction sought by it to be exercised in * * * the order presented for review." (Transcript of record p. 217.)

Judgment was entered upon that decision annulling said order. (Transcript of record p. 241.)

The commission thereupon filed in this court its petition for a writ of certiorari, seeking the reversal of said judgment, and the writ was duly issued.

SPECIFICATION OF ERRORS

The error relied upon by the State commissions, parties to this brief, and desired to be argued here, consisted in said erroneous ruling that by virtue of the Transportation Act, 1920, the Railroad Commission of California had been divested of power to make the order in question.

The order requires the abolition of certain grade crossings, found to be dangerous to public safety, and it is stated in the order that the same is made to enable the abolition of those crossings *and* the provision of adequate station facilities. It may accordingly well be argued that the order falls within the authority of

Erie Railroad Co. v. *Board of Public Utility Commissioners*, 254 U. S. 394. In this brief, however, that aspect of the case will not be argued, for the reason that the parties to this brief hope that the case may be disposed of by a clear ruling of this court to the effect that the power of a State commission (exercised under authority of the law of the State) to require the construction of terminal station facilities necessary for intrastate commerce, when such requirement will not interfere with a valid existing order of the Interstate Commerce Commission, has been in no way affected by the Transportation Act, 1920.

ARGUMENT

The California court held the order involved in this case invalid, as we have seen, because it was of the opinion (1) that the Transportation Act, 1920, vested in the Interstate Commerce Commission full power and authority over the matter of terminal facilities upon the interstate railroads affected by the order, and (2) that by virtue thereof the California Commission had been divested of its power over the same subject matter.

We will discuss these two propositions in their order.

THE COURT BELOW ERRED IN RULING THAT THE INTERSTATE COMMERCE COMMISSION HAS BEEN GRANTED POWER TO REQUIRE CONSTRUCTION OF UNION PASSENGER STATIONS.

The California court cites various provisions of the Transportation Act, 1920, for the purpose of showing the wide scope of the amendments to the Interstate

Commerce Act contained therein, whereby the powers of the federal commission are admittedly greatly enlarged. But none of these provisions conferred upon the federal commission power to require construction of union passenger stations. Those which appear perhaps to be relied upon by the California court we will refer to briefly.

Subdivision (c) of paragraph (15) of section 1 of the Interstate Commerce Act, as amended, is set out in the California opinion. But that subdivision is one of several in the paragraph granting power to the federal commission to control traffic and the use of *existing* tracks and terminal facilities in times of "emergency." Power and authority to require the *construction* of stations cannot have been vested in the federal commission by the provisions of that subdivision.

Paragraphs (3) and (4) of section 3 of the amended act are also quoted in the opinion. But those paragraphs also refer to facilities and lines *in existence*, and do not purport to confer upon the federal commission power to require the construction of new facilities.

Paragraph (21) of said section 1 is also quoted. That paragraph gives the federal commission power to require any carrier by railroad (1) to provide itself with safe and adequate facilities for the performance of "its car service as that term is defined in this act," and (2) "to extend its line or lines."

The definition "car service" as used in the act, is found in paragraph (10) of section 1, and includes the use, movement and distribution merely of *equipment*.

The provision that the federal commission may require a carrier to "extend its line or lines," found in said paragraph (21), is an important new grant of power. It relates, however, to extensions into new

territory not before served, and not to mere relocation of existing lines of railroad, or to construction of new stations upon such lines. The words "its line or lines," as used in said paragraph (21), are almost exactly the same words, as they are undoubtedly of the same meaning, as "its line of railroad," as the latter words are used in paragraph (18) of said section 1. The meaning of them will be further immediately discussed in connection with that paragraph.

Paragraph (18) is also quoted in the opinion, and the conclusion of the California court appears to be rested mainly upon its provisions, and upon complementary provisions of paragraph (20) of said section 1.

Paragraph (18) provides that after ninety days after the taking effect of the paragraph "no carrier by railroad * * * shall undertake the extension of *its line of railroad*, or the construction of *a new line of railroad* * * * unless and until it shall first have obtained from the commission a certificate that the present or future public convenience and necessity require, or will require, the construction * * *"

Paragraph (20) provides that "from and after issuance of such certificates, and not before, the carrier by railroad may, *without securing approval other than such certificate*," proceed with the construction.

Compliance with the order of the California Commission requires certain changes in track location, and these the California court in its opinion described as "changes and *extensions of the railroad lines* * * * necessary for the utilization of said depot."

Referring then to said paragraphs (18) and (20), the court said:

> "In the matter of the extension of railway facilities * * * *including terminals*, not only is the (federal) commission empowered to act upon the subject, but Congress has expressly prohibited the railroad companies from acting without the consent of the Interstate Commerce Commission."

It is this fundamental error as to the purpose and effect of said paragraphs (18) and (20) that led the California court to its erroneous decision. That court gave to the term "extension of its line of railroad" a meaning equivalent to "addition to any part of its railroad," as the term "railroad" is defined in paragraph (3) of section 1. And in support of this construction it quoted the definition of "railroad" as found in that paragraph. Only by so doing could it have included "terminals" as falling within the effect of said paragraphs (18) and (20). But for the fact that the court below fell into this error, it would not seem necessary to argue that the construction applied to said paragraph (18) is not a tenable one. The purpose of the two paragraphs is obvious. Paragraph (3) is a broad definition of a railroad, intended to include, as parts of the thing defined, all of the physical properties whereby a rail carrier performs the service of transportation.

Paragraph (18) was intended to require the approval of the federal commission before an existing railroad could be extended into new territory, or a new railroad could be built. It was intended also, by provisions not above quoted, to permit, with the like approval, the abandonment of unprofitable lines, without the necessity for State authority. The paragraph, however, was not intended to apply to additions and betterments, merely, although involving changes in track location,

and hence the abandonment of some track and the building of other track.

This is the construction which has been placed upon the act by the Interstate Commerce Commission.

> *Application of the Philadelphia, Newton & New York Railroad*, 67 I. C. C., 252.
> *Application of the Pearl Valley Railroad Company*, 67 I. C. C. 748.

A contrary construction making "extension of its line of railroad" the equivalent of "addition to its railroad" (as that term is used in the definition aforesaid) would be absurd and unworkable, for it would require every carrier subject to the act to obtain from the Interstate Commerce Commission a certificate of convenience and necessity for every piece of track relocation, for every building constructed or abandoned, and even for every piece of equipment added or retired.

Inasmuch as changes in track location, and the construction of the new union depot, required of the carriers by the California commission's order, do not come within the description "extension of its line of railroad," the approval of the federal commission, in the form of a certificate of convenience and necessity, under the provisions of said paragraphs (18) and (20), is not required, and the main ground upon which the California opinion was rested disappears.

The summary review which we have just taken of the several provisions of the Transportation Act, 1920, quoted and apparently relied upon by the California court, has shown also that those provisions do not attempt to confer upon the federal commission any power to compel construction of new passenger stations.

THE COURT BELOW ERRED IN RULING THAT THE TRANSPORTATION ACT, 1920, OPERATED TO DIVEST THE STATE OF CALIFORNIA OF POWER TO REQUIRE CONSTRUCTION OF A UNION PASSENGER STATION.

The second proposition, upon which the California court based its conclusion, was that the Transportation Act had divested the California commission of power sought to be exercised in the order involved. This divestiture, however, is stated by the California court as an assumed necessary consequence of the supposed grant of power over the same subject matter to the federal commission. No language of the Transportation Act is or can be pointed out whereby in express terms Congress undertook to divest the States of their previously existing police power to require improvements of facilities necessary for the public safety or convenience. It is merely by virtue of the supposed grant to the federal commission that an implication is supposed to arise divesting the States of power with respect to the same subject matter. Power existing at the same time in Federal and State commissions is assumed to be incompatible and impossible as a matter of law.

It is obvious that if we are right in the contention made in the immediately preceding portion of this brief, to the effect that the Transportation Act did not vest the federal commission with power to require the construction of union passenger stations, then there could be no consequent divestiture of State commissions of their power previously existing with respect to the same subject matter. If, however, it be assumed, for

purposes of argument, that the Transportation Act amendments may any of them be construed as conferring power upon the federal commission to require the construction of the facilities here involved, nevertheless the mere delegation of such power to that commission does not, in the absence of action by that commission, destroy the power of the States to act.

This principle was very clearly laid down by this court in *Missouri v. Larrabee*, 214 U. S. 612, 53 L. Ed. 352. In that case the state court had by mandamus ordered one carrier to transfer and return cars loaded and unloaded from the tracks of another carrier to the Larrabee Company mills. About three-fifths of the Larrabee Company's business, affected by the state court order, was interstate. The Interstate Commerce Commission had been created when the order of the state court was made, and had full power to regulate the very matter dealt with in that order. Upon that ground the carrier contested in this court the validity of the order. The state court, however was sustained, and the reasoning upon which this court based the decision is so completely applicable to this case that we quote from the opinion at length:

> "The roads are, therefore, engaged in both interstate commerce and that within the state. In the former they are subject to the regulation of Congress; in the latter, to that of the state; and, to enforce the proper relation between Congress and the state, the full control of each over the commerce subject to its dominion must be preserved.
> * * *
>
> " 'This case does not rest upon any distinction between interstate commerce and that wholly within the state. It is the contention of counsel for the mill company that it comes within the oft-repeated rule that the state, in the absence of express action

by Congress, may regulate many matters which indirectly affect interstate commerce, but which are for the comfort and convenience of its citizens. Of the existence of such a rule there can be no question. It is settled, and illustraated by many cases.

"Thus, in *Cooley* vs. *Port Waardens,* 12 How. 299, 13 L. E. Ed. 996, it was held that a regulation of pilots and pilotage was a regulation of commerce within the grant of the power of Congress; but further that (p. 319):

" 'The mere grant of such a power to Congress did not imply a prohibition on the states to exercise the same power; that it is not the mere existence of such a power, but its exercise by Congress, which may be incompatible with the exercise of the same power by the states, and that the states may legislate in the absence of congressional regulations. Sturgis vs. Crowninshield, 4 Wheat, 193, 4 L. Ed. 548; Houston vs. Moore, 5 Wheat 1, 5 L. Ed. 19; Willson vs. Black Bird Creek Marsh Co., 2 pet. 251, 7 L. Ed. 414.'

"In Cleveland, C., C. & St. L. R. Co. vs. Illinois, 177 U. S. 514, 44 L. Ed. 868, 20 Sup. Ct. Rep. 722, is a collection by Mr. Justice Brown, speaking for this court, of a number of these cases. We quote from the opinion (pp. 516, 517):

" 'Few classes of cases have become more common of recent years than those wherein the police power of the state over the vehicles of interstate commerce has been drawn in question. That such power exists and will be enforced, notwithstanding the constitutional authority of Congress to regulate such commerce, is evident from the large number of cases in which we have sustained the validity of local laws designed to secure the safety and comfort of passengers, employees, persons crossing railway tracks, and adjacent property owners, as well as other regulations intended for the public good. * * *.'

"On the other hand, it is said that Congress has already acted—has created the Interstate Commerce Commission, and given to it a large measure of control over interstate commerce. But the fact that Congress has intrusted power to the Commission does not, in the absence of action by it, change the rule which existed prior to the creation of the Commission. Congress could always regulate interstate commerce, and could make specific provisions in reference thereto, and yet this has not been held to interfere with the power of the state in these incidental matters. A mere delegation by Congress to the Commission of a like power has no greater effect and does not of itself disturb the authority of the state. It is not contended that the Commission has taken any action in respect to the particular matters involved. It may never do so, and no one can, in advance, anticipate what it will do when it acts. Until then the authority of the state in merely incidental matters remains undisturbed. In other words, the mere grant by Congress to the Commission of certain national powers in respect to interstate commerce does not of itself, and in the absence of action by the Commission, interfere with the authority of the state to make those regulations conducive to the welfare and convenience of its citizens. Running through the entire argument of counsel for the Missouri Pacific is the thought that the control of Congress over interstate commerce, and a delegation of that control to a commission necessarily withdraws from the state all power in respect to regulations of a local character. This proposition cannot be sustained. Until specific action by Congress or the Commission, the control of the state over these incidental matters remains undisturbed."

Whatever the possible extent of the federal commission's power to act with respect to union passenger

terminal station in Los Angeles, it has not acted. Such power, if any it has, is no less dormant than it was in the hands of Congress before the Transportation Act was passed.

In these circumstances, under what this court calls the "oft-repeated rule," reaffirmed in the Larrabee case, the California commission had power to make the order in question. There was no incompatibility between such power and a dormant but unexercised power also held by the federal government, and authorized to be exercised by the federal commission.

The federal constitution was not adopted to destroy the governmental powers of the state, but to perfect the powers of the federal government. The good sense and necessity of the rule laid down in *Cooley* vs. *Port Wardens*, cited as the leading case in *Missouri* vs. *Larrabee*, and followed in that case, is obvious. It is unthinkable that the peoples of the several states should be disabled from requiring of the public service companies operating within their respective jurisdictions the provisions of necessary facilities and service, merely because, acting through the federal constitution, they have endowed the federal government with power to make necessary requirements as to interstate commerce.

If the rule had early been adopted that the states might not act in any matter concerning which the federal government, under the constitution, *had power to act*, it is doubtful if the federal government could have endured. If it had endured, certainly we should have a very different system of government from what we have today. But under the rule that was adopted the whole field of government has been occupied, and without conflict of powers. When occasion for federal ac-

tion has been recognized by the federal government such action, within the federal field, has been dominant. But federal nonaction has not left local needs, recognized locally, impossible to be cared for by action of the proper state government.

Accordingly, even if there were no contrary intent clearly expressed in the statute, it would not be presumed that Congress, by any grant of power to the federal commission to make orders requiring the construction of facilities, intended to dispossess the states of power to make similar orders where the federal commission had not acted. But Congress did not leave opportunity for question on this point. It wrote into the Interstate Commerce Act, as amended by the Transportation Act, in most explicit and all-inclusive language, the rule of the Larrabee case.

In Paragraph (17) of section 1 it is provided as follows:

> "Provided, however, that nothing in this act shall impair or affect the right of a state in the exercise of its police power to require just and reasonable freight and passenger service for intrastate business, except in so far as such requirement is inconsistent with any lawful order of the Commission made under the provisions of this Act."

This proviso relates not alone to the paragraph in which it is found, but to the entire Interstate Commerce Act. Nothing that may be found in any part of the Act, as it now stands, may, in the face of the mandate, properly be construed as an occupation of the field of regulation, of such exclusive character as to bar the exercise of the police power of the states to make any require-

ment that may be necessary in the interest of intrastate commerce, so long as the state requirement does not conflict with some order lawfully made by the federal commission, in the exercise of power delegated to it.

This provision, so clear and definite, in some way appears to have escaped altogether the consideration of the California court. No reference is made to it in the opinion below.

LEGISLATIVE HISTORY OF THE TRANSPORTATION ACT

In view of the long established rule first announced in *Cooley* vs. *Port Wardens*, and followed in various cases, and so clearly reaffirmed in the Larrabee case, and in view of the explicit enactment of that rule as a part of the statute, in said paragraph (17), we believe the second proposition relied upon by the California court—that the states have been divested of their power to make orders of the kind here involved—is clearly erroneous, and that the consideration of extraneous evidence as to the proper interpretation of the Transportation Act amendments, as they relate to that question, is not necessary, and even inadmissible.

If, however, there is deemed to be any ambiguity upon that point, such reference would be proper. It appears to be well settled that when an act to be construed is capable of various interpretations, reference may be had to representations made to Congress, and to testimony before committees, to committee reports, and to statements made concerning the purpose and meaning of the bill while under consideration in either house by the committee member having the bill in charge.

Holy Trinity Church vs. *United States*, 143 U. S. 457, 464; *Johnson* vs. *Southern Pacific*, 196 U. S. 1, 19; *Houston & Texas Railway* vs. *United States*, 234 U. S. 342; *Caminetti* vs. *United States*, 242 U. S. 470, 490; *Corona Coal Company* vs. *Southern Railway*, 266 Fed. 726, 732; *Duplex Printing Company* vs. *Deering*, 254 U. S. 443.

A brief reference to the legislative history of the Tranportation Act will show that those who framed the Act, and Congress when it passed the same, had no intention of interfering with the police power of the states, so far as the same might continue to be exercised without conflict with orders lawfully made by the federal commission.

Throughout the hearings before Congressional committees which preceded the passage of the Transportation Act no one asked that the police powers of the the states to be interfered with. In the hearing before the Newlands committee (reported as a part of the hearings before the Senate Committee on Interstate Commerce upon Extension of Tenure of Government Control of Railroads, 65th Congress, 3rd Session) Mr. Julius Krutschnitt, Chairman of the Executive Committee, Board of Directors of the Southern Pacific Company, made a statement, from which we quote:

> "There is a control of certain expenses that I do not see how you can take out of the hands of the States—that is, as to these local matters. I enumerated the demands made on us for useless stations as one of the handicaps we labor under.
>
> "Mr. Sims. Why can't that power now exercised by the State be taken out and placed under the control of the Federal Government, as well as any other power exercised by the States?

"Mr. Kruttschnitt: Theoretically it could, but I don't suppose the Federal Government would be very familiar with the facts, we will say, at Fair Oaks station, in California. That is an actual case, as to whether it should have a pagoda or flag station or whether there should be a water-closet there. The commission would not understand the situation as well as the local people out there. * * * It seems to me I can answer your question best by comparing the condition of the carriers to a man who, perhaps, has a very severe or very bad carbuncle and corns that interfere with his powers of locomotion and sitting down, and might also have a small pimple on his cheek. It would interest him much more to get rid of the carbuncle and corns and let the pimple take care of itself. In other words, he can stand it. The carriers, if they can have one power to take care of their revenues, which is their life—their 100 per cent—they could very well leave the control of certain of their expenses, amounting to a small fraction of the revenue, in the hands of the States, where it is now. * * * I should think, then, it was entirely within their power (the Congress) and proper that they should say, 'While we have the right to take over everything—rates, taxes, road crossings, and new stations—we do not think, in the public interest, that it is necessary to do that.' Could they not say, 'We think that these evils, or most of them, can be corrected by our turning over to the National Government the power of regulating revenues and of passing on security issues and fixing rates generally, and we leave to the States everything else?'" (Pages 977, 978, 980, 981.)

In the hearing before the Committee on Interstate and Foreign Commerce of the House of Representatives on H. R. 4378 (which finally became the Trans-

portation Act) 66th Congress, 1st Session, Mr. R. S. Lovett, President of the Southern Pacific Railroad Company, then arguing for an extension of federal control to State rates, said:

> "I do not advocate the abolition of the State commissions. There are many important functions for them to perform. There are not only public utilities of various kinds, such as street railways, interurban railways, electric light and power companies, water companies, etc., which they ordinarily regulate, but the ordinary police powers of the States with respect to the railroads, not involved in the matter of rates and through service, could be left to them * * *." (Page 1313.)

In reporting the bill to the House of Representatives, Chairman Esch, discussing federal incorporation, which had been proposed, but not incorporated in the bill, said:

> "So far as the exercise of police powers on the part of the several States is concerned, there should be no interference by federal authority. The States have a field here peculiarly their own, and have occupied it and doubtless will be permitted to occupy it, but in a larger way the committee did not believe that the time had come to enact legislation that would practically wipe out the authority and control of the several States. It may come in time. It seems to me that the legislation of Congress in recent years, supplemented and possibly hastened by the decisions of the Supreme Court in the Shreveport, the South Dakota, and the Minnesota rate cases, is hastening the day when State control over common carriers will be vastly lessened. However, even though the trend

is now that way, the committee felt that the natural process should be permitted to have their course rather than that we should, by a revolutionary stroke and at a given time, wipe out the jurisdiction of the several States." (Congressional Record, Vol. 58, Part 8, page 8310, Nov. 11, 1919.)

Senator Cummins, in presenting the bill to the Senate, said (Congressional Record, Vol. 58, Part 1, page 143, December 4, 1919):

> "It leaves with the State authorities many things which, in my judgment, if we were to exercise our full power, we could withdraw from the States. But the committee has not considered it wise to withdraw more than seemed to be absolutely necessary under such conditions. * * *
>
> "And again, we have tried hard and labored earnestly to preserve to the States all the authority that can possibly be preserved."

Following the statement of Chairman Esch, above quoted, the matter of union depots was specifically brought before the House. While the bill was under consideration, Congressman McClintic, of Oklahoma, offered an amendment as follows:

> "Provided, further, that the Commission (Interstate Commerce) is hereby given authority to require a carrier to maintain its present arrangement, or to make new arrangements relative to the joint use of depots, upon such terms as shall be found by the Commission to be just and reasonable. No carrier shall be allowed to discontinue the use of a depot in connection with another carrier until proper application has been made to the Commission." (Congressional Rec-

ord, Vol. 58, Part 9, page 8578, November 15, 1919.)

Thereupon the following colloquy occurred:

"Mr. Esch: Mr. Chairman, the matter which the gentleman from Oklahoma seeks to reach by his amendment lies almost wholly within the police powers of the several States. There have been amendments offered to his bill seeking to preserve such police powers. The committee in framing the bill has sought not to encroach upon such powers. The matters of depots and joint use of depots is practically in the jurisdiction of the State commissions, and all but one of the States have such commissions. In such small matters the detail should be left within the jurisdiction of the State authorities, who know the situation, know the conditions, and know how best to meet the needs. There is, however, a provision in this bill providing for the joint use of terminals.

"Mr. McClintic: Will the gentleman yield?

"Mr. Esch: But that power will be exercised, I have no doubt, mainly in connection with the terminals in the large cities and in the congested centers. Due to the prohibitive cost of land, it is necessary to get a greater use out of existing terminals by giving to some regulatory authority, like the Interstate Commerce Commission, the right to order the joint use of such terminals, but that that power should be exercised as to depots in small communities is not contemplated. That power should be left, as we leave it, to the regulatory bodies of the several States. I now yield to the gentleman from Oklahoma.

"Mr. McClintic: Does the gentleman think that the State commissions will have a sufficient amount of jurisdiction to handle a question of this kind?

"Mr. Esch: Most certainly. They do under the powers granted in my State, and I think it is true

in many States. I do not know the situation in Oklahoma.

"Mr. McClintic: The gentleman does not feel that this bill takes away any of their jurisdiction?

"Mr. Esch: No.

"Mr. McClintic: Mr. Chairman, upon the statement of the Chairman of the committee, I will be glad to withdraw the amendment." (Congressional Record, Vol. 58, Part 9, page 8579, November 15, 1919.)

The statement thus made by Chairman Esch was an authoritative declaration of the intent of the committee of Congress which framed the bill. But the charge was made that the bill was "uncertain and doubtful of construction." (Congressional Record, Vol. 58, Part 9, page 8587, November 15, 1919.) And two days later Congressman Sweet, a member of the Interstate and Foreign Commerce Committee, offered the amendmnt which finally became the proviso in paragraph (17) of section 1. (Congressional Record, Vol. 58, Part 8, page 8653, November 17, 1919.)

It is a striking illustration of the difficulty with which the rights reserved to the States are preserved, that when no language prohibiting the exercise of the police powrs of the States can be found in the Transportation Act, and when the chairman of the committee that drew the Act gave the Congress his assurance that it left those powers undisturbed, and when the Congress, to make assurance doubly sure, wrote into the statute the express proviso in said paragraph (17), the States nevertheless are compelled to come before this tribunal to defend the continued exercise of their accustomed police powers.

THE PLAN OF THE ACT IS INCONSISTENT WITH THE CONSTRUCTION OF THE CALIFORNIA COURT.

It may also be pointed out that the plan of the Interstate Commerce Act is wholly inconsistent with the idea of an implied direct inhibition of the exercise of the previously existing power of a State to require the erection of a union depot.

As it now stands, the act does in certain most important respects limit the powers of the States formerly exercised by them in the regulation of carriers. There are two methods whereby such limitation is accomplished, and they apply, respectively, in two classes of matters, concerning which Congress has adopted widely different policies.

One class of matters are those with regard to which Congress has adjudged it necessary to assume complete control, excluding State action. Dealing with this class Congress has in clear terms vested power in the federal commission, and in like clear terms divested the States of power affecting the same matter.

The other class of matters are those with respect to which Congress has adjudged that the continuance of State power is not ordinarily hurtful to interstate commerce, but that the power may be exercised in particular cases in such manner as to be hurtful. In this class Congress has left the States free to exercise their accustomed powers in the first instance, but has provided for the nullification of State action in particular cases, when the fact of its injury to interstate commerce has been first established by a finding of the Interstate Commerce Commission after due hearing.

The matters with respect to which Congress has

aimed, by the direct effect of language contained in the act itself, to deprive the States of power are the following:

1. The authorization of the construction of new lines and extensions of old lines (paragraphs (18) and (20), section 1).

2. The authorization of the abandonment of old lines, or the prevention of such abandonment, in whole or in part (paragraphs (18) and (20), section 1).

3. Consolidations of existing lines (paragraphs (6), (7), and (8), section 5).

4. The authorization of issues of securities (paragraphs (2)-(7), inclusive, section 20a).

These matters from the nature of them admit of only a single control. A State order with respect to any of them, differing from a federal order or requirement, must either be ineffective or must nullify the federal order or requirement. Accordingly, State power was excluded, and by definite language.

But as to rates and practices affecting charges applicable to intrastate traffic, continued State regulation was not necessarily incompatible with the accomplishment of the purposes of federal regulation. Accordingly, these matters were left subject to primary regulation by the States. They constitute the second class.

From the beginning there were in the act dovetail provisions which gave the federal commission a measure of indirect control over intrastate rates. In section 3 it was provided:

> "That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company,

> firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatever."

In section 15 it was also provided:

> (As amended June 29, 1906, and June 18, 1910.) "That whenever, after full hearing * * * the Commission shall be of opinion that any individual or joint rates or charges whatsoever demanded, charged, or collected by any common carrier or carriers subject to the provisions of this act * * * are unjust or unreasonable or unjustly discriminatory, or unduly preferential or prejudicial or otherwise in violation of any of the provisions of this act, the commission is hereby authorized and empowered to * * * make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds the same to exist."

Acting in the exercise of the power conferred in section 15, the commission could require carriers to desist from applying rates prescribed by State law, if such rates operated to create unjust discrimination against persons or localities engaged in interstate commerce. This was established in the Shreveport case. (*Houston, East & West Texas Ry. Co.* vs. *United States*, 234 U. S. 342.) But until investigation and determination of the fact of such discrimination by the federal commission rates prescribed by State authority were valid. This was established in the *Minnesota Rate Cases*, 230 U. S. 352, where this court held that the question of discrimination under the Act as

it then stood "would be primarily for the investigation and determination of the Interstate Commerce Commission, and not for the courts."

When the Transportation Act was under consideration it was urged upon Congress by carriers that State regulation of intrastate rates operated to restrict unduly the earnings of carriers, and reduced their efficiency in the performance of their interstate service. Congress was asked to confer upon the federal commission exclusive jurisdiction over all rates of interstate carriers. But it determined not to interfere with the exercise of State power over intrastate rates except by extending the limitation already found in the dovetail provisions of sections 3 and 15, already quoted.

Paragraphs (3) and (4) were added to section 13, containing language which declared unlawful "any undue, unreasonable, or unjust discrimination against interstate or foreign commerce" caused by any "rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State" and gave the commission power, upon a finding, after due hearing, of the existence of such discrimination, to abate the same directly by prescribing the intrastate rate or regulation.

This was a very great limitation upon State power, in that it subjected State rates to review by the federal commission upon a new and much broader ground than before; and yet it left the States full freedom of action in the making of rates, subject to such review.

The plan of the act, so far as the limitation of State power is concerned, accordingly, may be briefly stated as follows: As to those matters wherein the purpose

of Congress could not be carried out without conferring complete and exclusive power upon the federal commission, such power was conferred, and State power was excluded in express terms; and in those cases where State power of regulation might possibly interfere with the Congressional purpose, but would not necessarily interfere, the States were left free in the exercise of their power in the first instance, but provision was made whereby State action might be nullified by proceedings before the federal commission, if found in a particular case to interfere to such an extent as to amount to unjust discrimination against interstate commerce.

The point which we make is that if any of the provisions relied upon by the court below do operate to destroy the previously existing power of a State to make a requirement such as that involved in this case, it is a departure from the orderly plan of the act.

First, unless the track changes, or the construction of the union station, required by the order, fall within section 18, constituting construction of a "new line" or construction of an "extension of an existing line," or the "abandonment" of an old line, or portions thereof, there is no express withdrawal of State power, as in the case of every other complete withdrawal of such power made by the act.

Second, every other case of complete withdrawal of State power has been necessary to the accomplishment of the federal purpose. In this case, on the contrary, the continued exercise by the States of their accustomed police powers to require improvements necessary for the public safety and convenience, would not to any considerable extent affect the federal purpose as to the earning by carriers of an "aggregate

return'' upon the ''aggregate value'' of carrier properties. It could affect it vastly less than continued State regulation of intrastate rates. The comparative importance of continued State power over rates and continued State power over improvements, as affecting the financial ability of carriers, was described by Mr. Kruttschnitt to the congressional committee, in language that has already been quoted, as having about the relation of a carbuncle to a pimple.

All the acts of Congress which are now represented by the Interstate Commerce Act have contained many manifestations of a continuing purpose to refrain from any regulation of intrastate commerce except as the same may be a necessary incident to the effective regulation and protection of interstate commerce. *State of Texas* vs. *East Texas Railroad*, 258 U. S. 204. In the carrying out of this purpose Congress left unaffected the power of the State to prescribe intrastate rates, in the first instance, relying upon the review provisions before mentioned for the protection of interstate commerce against any harm from its exercise. It would be an instance of strange departure from that continuing purpose, as well as a departure from the otherwise orderly structure of the act, if in dealing with respect to State power to require terminal depot facilities necessary for the convenience and safety of the public, the exercise of which the experience of the past has shown to be of comparatively small importance in its financial effect upon the carriers, Congress by the terms of the statute itself has rigidly excluded all State action.

Not only was it stated to Congress by those who spoke for the carriers that the importance of orders made by State authorities requiring expenditures for

improvements was of comparatively slight importance, but that is of common knowledge. Legislatures and their agencies, the regulatory commissions, have acted with a proper caution and conservatism in requiring capital expenditures. This is an unusual case in the amount of money that will require to be expended; but the record demonstrates that the California commission proceeded with extreme care and thoroughness in its investigation, and that the situation disclosed justified the expenditure that will be involved in a compliance with the order. But, speaking of the transportation situation from a national viewpoint, not much money, in the aggregate even, is expended upon improvements required by mandatory orders of State authorities, when compared with the vast capital already invested, or with capital expenditures voluntarily made by carriers, or with the annual revenues of carriers.

It was, as Mr. Krutschnitt said, in the statement which has been hereinbefore set out, a small affair, which Congress might well leave wholly to the States.

If, however, Congress had decided to guard against the possibility of unnecessary expenditures by carriers under State orders, would it not have conformed its restriction to the plan already in force (and in the Transportation Act extended in its scope), as to intrastate rates, and have allowed the States to continue to exercise their police powers, subject to a power lodged in the hands of the federal commission to nullify State action in a particular case, if found to require expenditures not justified and of such amount as to operate as "a real discrimination against and obstruction to interstate commerce?" In short, would it not have guarded against the hurtful exercise of State power, rather than have destroyed State power

altogether? On the other hand, if it had determined to interdict the exercise of State power, would it not have done so in express terms, as it did in the case of construction of new lines, abandonment of old lines, consolidations and issuance of securities?

COURT DECISIONS UPON THE QUESTION INVOLVED IN THIS CASE

So far as we are aware, there has been no ruling by any federal court upon the question involved in this case. Aside from this case there have been three cases in State courts.

The first was the Selma Station case, *North Carolina Corporation Commission* vs. *Southern Railway*, 117 S. E. 563. In that case the carrier sought to resist an order of the North Carolina commission, made before the passage of the Transportation Act, but involved in mandamus proceedings brought by the commission after the act was passed, requiring the construction of a union station at Selma, North Carolina. It was urged that the order was "beyond the competency of the Corporation Commission since the enactment of what is known as the Transportation Act of 1920." The court denied the carrier's contention. We quote from the opinion:

> "*We have examined the act of 1920 carefully, and we do not find any provision therein which grants to the Interstate Commerce Commission, either expressly or by clear implication, the power, or which makes it its duty, to require the erection of passenger stations.* It is not claimed in this case that such an order has been made by the Interstate Commerce Commission. The right of the State, then, to act in this particular is expressly

preserved to it by the Transportation Act of 1920. Sec. 402, sub-sec. 17. * * * We might take up the provisions of the act of 1920 in detail, but such a consideration of it would lead merely to the same conclusion, that enforcing the judgment of the Commission will not have the effect 'to burden or trammel interstate or foreign commerce, or to trench upon those subjects, which are material in their character, and which are within the exclusive power of Congress to regulate,' as was said supra in 5 R. C. L. pp. 702-704, but it would rather have the opposite effect and tend to be an aid to commerce, and so, as the books and authorities all state, should receive from the courts favorable recognition, especially when there can be harmonious operation of both systems of laws." (Italics ours.)

The opinion sets out the McClintic amendment, offered while the Transportation Act was before Congress, which we have before quoted, and the statement of Chairman Esch, also before quoted. It then proceeds as follows:

"Mr. McClintic thereupon offered to withdraw the amendment, but another member insisted on having a vote thereon. Thereafter his amendment, which would have conferred upon the Interstate Commerce Commission jurisdiction over union passenger depots, was rejected, Congressional Record, November 15, 1919, p. 9071. This would seem to indicate that the Congress saw fit to leave the federal commission without jurisdiction, understanding that the matter of union stations would continue within the jurisdiction of the State commissions."

There was no dissent from this opinion. A concurring opinion was filed, which in full was as follows:

"Hoke, J.: I concur in the disposition made of these appeals for the reason that, in my opinion, the recent Transportation Act referred to does not and does not intend to withdraw from the State commission having charge and control of the subject the power to make adequate regulation and provision for the establishment of passenger stations for intrastate travel, assuredly so except at terminal stations, where the particular order or regulation is of such magnitude as to impose a substantial burden on interstate commerce, *and that fact is established and made effective by appropriate proceedings instituted before the Interstate Commerce Commission.* (Italics ours.)

"I am authorized to say that Associate Justice Stacy concurs in this view."

The second case was *Chicago, R. I. & P. Ry.* vs. *State of Oklahoma*, (Vol. 217 Pac., Advance Sheets No. 1, September 17, 1923, page 147). In that case the carriers appealed from an order of the Oklahoma Commission requiring the construction of a union station in Oklahoma City. The case involved the identical question as to jurisdiction of the State commission which is involved in this case. We quote at length from the opinion:

"For reversal, it is first contended that the Corporation Commission was without jurisdiction to promulgate orders Nos. 2102 and 2123, for the reason the Corporation Commission was without jurisdiction to require the construction or maintenance of depots or union depots, contending the power to require railroads to join in construction and maintaining joint terminals has been withdrawn from the State by the act of Congress known as the Transportation Act (41 Stat. 456), and the Corporation Commission never has had, and does not now have, the power to require the rail-

roads to maintain their lines or require additional lines or trackage, or to negotiate or deal with other railways for additional or other trackage, or require the railroad companies to appropriate additional capital to public use; that said power exists only in the Interstate Commerce Commission, under the addition to the Interstate Commerce Act found in the act of Congress known as the Transportation Act (41 U. S. Stat. at L. 474).

"Prior to the passage of the Transportation Act of 1920, the power of the State, through its agency, the Corporation Commission, to require railroads to construct and maintain adequate depots, or if necessary, Union Depots, was settled and established by a long line of decisions of this court, both upon the theory the same was a proper exercise of its police power, or of the right reserved to the Legislature to amend, alter, or repeal the charter of said railroad. * * *

"Whether the State has been deprived of the power it once possessed involves a construction and interpretation of the Transportation Act (41 U. S. Stat. at L. 474). The Transportation Act amended certain paragraphs of the Interstate Commerce Act. Paragraph 3 of section 400, as amended, defines the term 'railroad' to 'include all bridges * * * switches, spurs, tracks, terminals and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein.' Paragraph 15 of section 402 provides:

"'Whenever the Commission is of opinion that shortage of equipment, congestion of traffic, or other emergency requiring immediate action exists in any section of the country, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint at once, if it so orders, without answer or other formal pleading by the interested carrier or carriers, and with or without notice, hearing,

or the making or filing of a report, according as the Commission may determine * * * (c) to require such joint or common use of terminals, including main-line track or tracks for a reasonable distance outside of such terminals, as in its opinion will best meet the emergency and serve the public interest, and upon such terms as between the carriers as they may agree upon, or, in the event of their disagreement, as the Commission may after subsequent hearings find to be just and reasonable.'

"Paragraph 17 of section 402 provides:

"'The directions of the Commission as to car service and to the matters referred in paragraphs (15) and (16) may be made through and by such agents or agencies as the Commission shall designate and appoint for that purpose.'

"Said section provides for compliance with its orders and fixes a penalty for refusal, and then contains the following proviso:

"'Provided, however, that nothing in this act shall impair or affect the right of a state, in the exercise of its police power, to require just and reasonable freight and passenger service for intrastate business, except in so far as such requirement is inconsistent with any lawful order of the Commission made under the provisions of this act.'

"*This proviso, in plain and unambiguous language, provides that nothing in this act shall impair the right of the State, in the exercise of its police power, to require just and reasonable freight and passenger service for intrastate business. It will not be contended that just and reasonable passenger service does not include adequate depot facilities. If we admit the Transportation Act, without the proviso, is subject to a construction that the State was deprived of the right to exercise its police power for the purpose of requiring just and reasonable freight and pas-*

senger service, what force and effect is to be given to the proviso? This court, in the case of Hudson vs. Hopkins, 75 Okl. 260, 183 Pac. 507, in reviewing the previous decisions of this court, stated as follows:

"'2. The natural and appropriate office of a proviso being to restrain or qualify some preceding matter, it should be confined to what precedes it, unless it clearly appears to have intended to apply to some other matter.

"'3. A proviso to a section of the statute should be construed with the section of which it forms a part, and, if the context requires it, may be considered tantamount to an independent enactment.'

"See, also, U. S. vs. Babbit, 1 Black, 55, 17 L. Ed. 94.

"*If the proviso is considered an independent enactment, or if it is confined to what precedes it and restrains and qualifies the preceding matter, in either case it would have the force and effect of leaving the rights of the State unimpaired. If we give force and effect to the proviso which, in plain and unambiguous language, reserved to the state the right to exercise its police powers for the purpose of requiring just and reasonable freight and passenger service for intrastate business, the state has not been deprived of the right to exercise its police power in proper cases, except in so far as such requirement is inconsistent with any lawful order of the Commission made under the provisions of this act.* * * *

"It will be conceded that all four railroad companies are engaged in intrastate and interstate business. The findings and admissions are the depot facilities are inadequate to accommodate the public needs in so far as its intrastate business is concerned. The State, by its orders, has found that the best and most economical matter of insuring adequate depot service is for all the roads

to construct a Union Depot, and orders and requires the roads to build and construct the same. The roads being unable to agree upon a location, The Corporation Commission itself located the depot. Under this state of the record, if we give any force and effect to the proviso to the Transportation Act, there can be only one logical conclusion reached, and that is, the State has power and authority to require the railroads to provide adequate depot facilities to insure reasonable passenger service. *To hold otherwise would be to hold that Congress, in enacting the proviso, used plain and unambiguous language in expressing its purpose and intent, but the court will construe this proviso as useless or deleterious, which is contrary to the rule in construing statutes.* See Harris vs. Bell, 250 Fed. 209, 162 C. C. A. 345. * * *

"In referring to the provisions of the new commerce act (in the Wisconsin Rate Case) Justice Taft stated the new measure imposes affirmative duties on the Interstate Commerce Commission to fix rates and to take other important steps to maintain an adequate railroad service for the people of the United States. This is expressly declared, in paragraph 15a, to be one of the purposes of the bill. Can it be said that an order requiring adequate depot facilities is a discrimination or obstruction to interstate commerce, or is unfair to interstate commerce, when the railroads have complied neither with the provisions of the Transportation Act by furnishing adequate service to interstate commerce, nor with their duty to the State regarding intrastate business by not affording adequate depot facilities? Can it be said the State has no power or authority to require adequate service when that is guaranteed to it by the Transportation Act, and the railroad companies admit their depot facilities are inadequate? Adequate service for intrastate passengers guarantees to the interstate passengers the same adequate service without discrimination.

"The defendant in error, to support the judgment of the Commission refers to the history of the Transportation Act to support the theory it was not intended by Congress to interfere with the State in the exercise of its policy power. As was said in the case of R. R. Commission vs. C., B. & Q., supra.

" 'Committee reports and explanatory statements of members of Congress in charge, made in presenting a bill for passage, while a legitimate aid to the interpretation of a statute when its language is doubtful or obscure, cannot control such interpretation when, taking the act as a whole, the effect of the language used is clear to the court. Such aids are only admissible to solve doubt, and not to create it.'

"*The proviso of the act of Congress is plain and unambiguous, and it is unnecessary for the court to seek aid in interpreting plain and unambiguous language.*

"In the case of R. R. Commission vs. C., B. & Q., supra, in referring to whether the Interstate Commerce Commission had unified control over all commerce, the court stated:

" 'It is only unified to the extent of maintaining efficient regulation of interstate commerce under the paramount power of Congress. It does not involve general regulation of intrastate commerce.'

"There is another principle of law applicable to the facts in the case at bar, which is announced in the case of Missouri Pacific Railway Co. vs. Larabee Flour Mills Co., 211 U. S. 612, 29 Sup. Ct. 214, 53 L. Ed. 352, where the court stated in substance: Notwithstanding the creation of the Interstate Commerce Commission and its control over certain matters, a State may, in the absence of express action by Congress or by such Commission, regulate for the benefit of its citizens local matters indirectly affecting interstate commerce.

> And it is further stated: Where there has been no action by the Interstate Commerce Commission, the State may compel a railroad company doing interstate business to afford equal local switching service to its shippers. If we apply that rule to the facts here as follows: Neither Congress nor the Interstate Commerce Commission have acted to remedy the inadequate passenger service, although it may indirectly affect interstate commerce—the State has a right to make proper orders to secure adequate service to its citizens, so long as the same are not inconsistent with the orders of Interstate Commerce Commission or discrimnatory, as heretofore announced." (Italics ours.)

The third case was *Shealy, et al. (Railroad Commission of South Carolina)* vs. *Southern Railway,* in which the Supreme Court of South Carolina lately refused a writ of mandamus to compel compliance with an order of the South Carolina commission requiring the construction of train sheds at Blackville, South Carolina. Relying largely upon the authority of the decision of the California court in this case, and upon certain general and inapplicable language of this court in the Wisconsin Rate case, the South Carolina court held that since the passage of the Transportation Act, 1920, action by State authorities requiring capital expenditures by interstate carriers is "interdicted." This opinion has not been reported, and a motion for rehearing before the court, sitting *en banc* with the circuit court judges of the State, has been granted. The case is now set for reargument on December 10, 1923.

From this review it will be seen that such cases as have been finally determined by the courts sustain the jurisdiction of the State commissions; but it will be

also seen that the States are being vexed with litigation through the insistence of carriers that State jurisdiction has been destroyed. The situation emphasizes the need for a clear declaration from this court which shall vindicate the rights of the States, reserved to them by the Constitution, and by the Congress in the Transportation Act itself.

Respectfully submitted,

Alabama Public Service Commission,
Arizona Corporation Commission,
Public Utilities Commission of Colorado,
Railroad Commission of Florida,
Public Service Commission of Georgia,
Public Utilities Commission of Idaho,
Board of Railroad Commissioners of Iowa,
Public Utilities Commission of Kansas,
Railroad Commission of Kentucky,
Department of Public Utilities of Massachusetts,
Railroad and Warehouse Commission of Minnesota,
Public Service Commission of Missouri,
Board of Railroad Commissioners of Montana,
Nebraska State Railway Commission,
Public Service Commission of Nevada,
Board of Public Utility Commissioners of New Jersey,
New Mexico State Corporation Commission,
Corporation Commission of North Carolina,
Board of Railroad Commissioners of North Dakota,
Public Utilities Commission of Ohio,
Corporation Commission of Oklahoma,
Public Service Commission of Oregon,
Railroad Commission of South Carolina,
Board of Railroad Commissioners of South Dakota,
Public Utilities Commission of Tennessee,
Public Utilities Commission of Utah,

Public Service Commission of Vermont,
State Corporation Commission of Virginia,
Department of Public Works of Washington,
Public Service Commission of Wyoming,
National Association of Railway and Utilities Commissioners.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1923.

No. 283.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,
Petitioner,

v.

SOUTHERN PACIFIC COMPANY AND SOUTHERN PACIFIC RAILROAD COMPANY, *Respondents.*

REPLY BRIEF OF RESPONDENTS TO BRIEF FILED AS AMICI CURIAE ON BEHALF OF THE NATIONAL ASSOCIATION OF RAILWAY AND UTILITIES COMMISSIONERS ET AL.

THE ISSUE IN THIS CASE.

The issue is not, as stated by counsel for the National Association of Railway and Utilities Commissioners as well as in the briefs for petitioner, whether, since the passage of the Federal Transportation Act, 1920, the power to *require* the construction of union passenger *stations* is now vested in the Interstate Commerce Commission, and the Supreme Court of California did not so hold.

The real issue is whether, since the amendments to the Interstate Commerce Act made by the Transportation Act of 1920, authority to determine the necessity for the consolidation and joint use of terminal facilities by carriers subject to the Act, and to authorize extensions and abandonments, in whole or in part, of lines or the operation thereof, and the necessary capital expenditures to accomplish these purposes, is now vested exclusively in the Interstate Commerce Commission, and whether the States have thereby been divested of jurisdiction and power which they might previously have exercised to accomplish these purposes.

REQUIREMENTS OF THE STATE COMMISSION'S ORDER.

In determining the question whether the order of the State Commission is in contravention of and repugnant to the Constitution and statutes of the United States, it is necessary to consider what this order *expressly* requires the respondents to do, and what respondents are *necessarily* required to do to carry said order into effect.

The first order entered by the Commission was not, as is contended by petitioner at page 4 of their reply brief, "entirely superseded," as in rendering its second order the Commission stated that "all that was said in the former opinion is now considered pertinent and of value herein and the same is therefore approved except as herein modified" (Tr. 136). And the Commission held in rendering its second opinion that its order was based "upon said findings of fact *and the further findings and statements of fact contained in the original opinion in this case and the opinion preceding this order,* * * *" (Tr. 145).

The *express* requirements of the Commission's order are as follows:

> "The Commission finds as a fact that public necessity and convenience demand a unification of passenger terminal facilities in Los Angeles * * *" (Tr., p. 86), and requires "the adoption of a comprehensive plan of transportation development in the territory under consideration in these proceedings * * *" (Tr. 99).
>
> "That defendants * * * do make and construct such additions, *extensions,* and improvements to, and changes in, their railroad facilities in the City of Los Angeles, and do erect a union passenger station and buildings incident thereto in said City of Los Angeles * * *" (Tr. 104).
>
> "Southern Pacific Company shall discontinue the operation of trains on Alameda Street between College Street and 15th Street, inclusive, * * * except for the purpose of local freight switching, which may be carried on during limited hours." (Tr. 150-151.)
>
> "The *unification* of the steam railroad passenger facilities and the construction of a union passenger station, the further development of freight facilities * * *" (Tr. 99).

The order of the Commission *necessarily* requires:

> "The construction of a connecting track between the depot yard of the union passenger station and the proposed site of the coach yard"; the abandonment of the "*main* freight yard of the Southern Pacific"; the construction of a new main freight yard for the Southern Pacific; the abandonment of the less than carload freight station of the Southern Pacific; the establishment of a new less than carload freight station for the Southern Pacific (C. R. C. Exhibit No. 1, page 454).

The joint use of lands, tracks and terminal facilities now owned by respondents of a value determined by the Commission's engineers to be $28,050,691 (C. R. C. Exhibit No. 1, page 498).

The abandonment of the three existing passenger terminals of respondents.

That there must be an extension of lines, abandonment of lines, and joint use of terminal facilities is expressly admitted by petitioners' counsel at pages 17, 18, 21 and 23 of their brief filed in support of their petition for the writ of certiorari.

One of the conclusions reached by the Commission is that "the table (Tr., p. 94) is included in this decision * * * merely to give an indication of the scope of the proposed development * * *" under "the general ultimate development plan to the extent that it is advisable and possible to lay down specifications at this time" (Tr., pp. 94-100). These costs, as shown by said table, range from $25,396,633 to $45,092,104. According to the Commission's statement, the chief engineer of the Commission estimated "the ultimate capital expenditure for all recommendations" at $32,233,445 (Opinion, Tr. 53).

EXTENT OF THE CONTROL OVER RAILROADS ENGAGED IN INTERSTATE COMMERCE TAKEN BY CONGRESS IN THE ACT TO REGULATE COMMERCE AS AMENDED BY THE TRANSPORTATION ACT OF 1920.

The purposes of Congress are to be determined not merely by the express regulations contained in the Act to Regulate Commerce as amended by the Transportation Act of 1920, but by the purposes of said legislation taken as a whole.

"When the question is whether a Federal act overrides a state law, the entire scheme of the statute must of course be considered and that which needs must be implied is of no less force than that which is expressed. If the purpose of the act cannot otherwise be accomplished—if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect—the state law must yield to the regulation of Congress within the sphere of its delegated power."

Savage v. Jones, 225 U. S., 501, 533.
Missouri, Kansas & Texas Ry. Co. v. Harris, 234 U. S., 419.

This was the method followed by the Supreme Court of California in reaching its conclusion in this case.

In the Transportation Act, Congress has provided for the consolidation by the Interstate Commerce Commission of the railway properties of the continental United States into a limited number of systems to be so arranged that "these systems can employ uniform rates in the movement of competitive traffic and *under efficient management* can earn substantially the same rate of return upon the value of their respective properties." (Sec. 5, par. 4 of Interstate Commerce Act, as so amended.)

Said Act further provides that in the exercise of its power to prescribe just and reasonable rates the Commission "shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and *economical management and reasonable expenditures for maintenance of way, structures and equipment*, earn an aggregate annual net railway oper-

ating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation." (Sec. 15a, par. 2.)

And in the next paragraph it is provided that the Commission shall from time to time determine what percentage of such aggregate property value constitutes a fair return thereon, and that in making such determination "*it shall give due consideration, among other things, to the transportation needs of the country and the necessity (under honest, efficient and economical management of existing transportation facilities) of enlarging such facilities in order to provide the people of the United States with adequate transportation.*" (Sec. 15a, par. 3.)

In the foregoing provisions Congress took control of the railway systems of the country as a whole, provided for their consolidation into a limited number of systems, and emphasized its will that said systems shall be managed in as *economical* a manner as possible, with *reasonable expenditures only* "for maintenance of way, *structures*, and equipment," and provided that in fixing rates the Interstate Commerce Commission shall give due consideration to the transportation needs of the country, and the necessity "under honest, efficient and *economical* management of existing transportation facilities" of *enlarging* such facilities.

For the purpose of insuring the carrying out of these objects Congress proceeds in said Act to provide (Sec. 402, amending Sec. 1 of Act to Regulate Commerce):

> "(18) After ninety days after this paragraph takes effect no carrier by railroad subject to this

Act shall undertake *the extension of its line* of railroad, or *the construction of a new line* of railroad, or shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation under this Act over or by means of such additional or extended line of railroad, *unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line* of railroad, and no carrier by railroad subject to this Act *shall abandon all or any portion of a line* of railroad, or the operation thereof, *unless and until* there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment."

It is further provided (par. 20) that no other approval of any such construction, operation or abandonment of lines shall be necessary than the certificate of the Commission.

It is also made a misdemeanor, punishable by fine or imprisonment for the carrier, its officers or agents, to violate the provisions of paragraph 18.

The *only limitation* upon this power given the Commission over the construction and extension of new lines and the abandonment of existing lines or any portion thereof is in the following paragraph of the same section:

> "(22) The authority of the Commission conferred by paragraphs (18) to (21), both inclusive, *shall not extend to the construction or abandonment of spur, industrial, team, switching or side tracks, located or to be located wholly within*

one State, or of street, suburban, or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation."

The Transportation Act (Sec. 400) provides that the word "railroad" as used in the Act to Regulate Commerce shall include "all switches, spurs, tracks, *terminals, and terminal facilities of every kind* used or necessary in the transportation of the persons or property designated herein, *including all freight depots, yards, and grounds,* used or necessary in the transportation or delivery of any such property."

By Section 405 the second paragraph of Section 3 of the Interstate Commerce Act is amended so as to read as follows:

"(3) All carriers, engaged in the transportation of passengers or property, subject to the provisions of this Act, shall, according to their respective powers, *afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines,* and for the receiving, forwarding, and delivering of passengers or property to and from their several lines and those connecting therewith, and shall not discriminate in their rates, fares, and charges between such connecting lines, or unduly prejudice such connecting line in the distribution of traffic that is not specifically routed by the shipper.

"(4) *If the Commission finds it to be in the public interest and to be practicable,* without substantially impairing the ability of a carrier owning or entitled to the enjoyment of terminal facilities to handle its own business, *it shall have power to require the use of any such terminal facilities, including main-line track or tracks for a*

reasonable distance outside of such terminal, of any carrier, by another carrier or other carriers, on such terms and *for such compensation* as the carriers affected may agree upon," etc.

A similar provision authorizing the Commission to require the joint or common use of terminals, including main-line track or tracks for a reasonable distance outside of such terminals, upon payment of compensation, is also contained in paragraph 15 of section 1 of the Interstate Commerce Act as amended by Section 402 of the Transportation Act, authorizing the Commission to require proper distribution of cars between carriers where the public interest requires it.

The Commission is also authorized to require a carrier "to provide itself with safe and adequate facilities for performing as a common carrier its car service as that term is used in this Act, *and to extend its line or lines.* (Par. 21 of Sec. 1.)

A new section (Sec. 20a) is added to the Act, *which forbids any carrier subject to the Act to issue any share of stock or any bond or other evidence of indebtedness, among other things, without authority from the Interstate Commerce Commission.*

The provisions of the Transportation Act above referred to clearly show the purpose of Congress to take such full and complete control over carriers by railroad engaged in interstate commerce, and of their rates, operations, management, etc., including the issuance of new securities, as to preclude the idea that the States may require such carriers to abandon existing terminal stations and facilities which are safe and adequate, or may be made safe and adequate at comparatively small expense, and unite in establish-

ing new and expensive joint depots and other terminal facilities, either to meet the demands of civic pride or the better convenience of the public. If one State can do this, all the States may, with the result that the most extravagant and alarming expenditures might be forced upon the carriers by the States, in the teeth of the declaration by Congress in the Transportation Act that the management of the railroads should be as economical as efficiency and the necessities of the undertaking will permit.

In the case at bar, the record shows that the cost to the three carriers of constructing a union passenger depot on the Plaza site will be from $25,000,000 to $45,000,000, according to the State Commission's own findings. (Tr., p. 94.) The estimate of the Commission's chief engineer was $32,000,000 (Tr., p. 53.)

Charged, as the Interstate Commerce Commission is, with the supervision and control of the carriers, subject to the Act, in the most important particulars, i. e., with the duty of consolidating the carriers into a limited number of systems; with the duty of prescribing rates which will secure a fair return to the carriers based upon their efficient and economical management of their properties; with the allowance of "reasonable expenditures" only "for maintenance of way, structures and equipment"; with the duty of regulating car distribution between the carriers so as to secure adequate transportation service, including the authorization of the joint use of terminals and main tracks leading into the same; with the duty of requiring the carriers to furnish proper facilities for the interchange of traffic between their respective lines; with the sole and exclusive duty of authorizing the construction of any new line or the extension or abandonment of exist-

ing lines, or any portion thereof, with the exception only of such negligible things as spurs, sidetracks, and switches located wholly in one State; with the exclusive power to approve or disapprove the issuance of any capital stock, bonds or other evidence of indebtedness or the assumption of other obligations by the carriers, which large expenditures for betterments and new structures would undoubtedly require; and with the power preserved in the States only to require "just and reasonable freight and passenger service for *intrastate* business," and that only insofar as the State's requirements are not inconsistent with any lawful order of the Commission made under the provisions of this Act—can it be doubted for a moment that *the authorization* for the construction of such gigantic and expensive structures as union terminal stations in large cities necessarily are, with the consequent changes, additions, extensions in existing trackage, structures and yards, and the acquisition of new areas and the construction of new tracks and buildings necessarily required, must come from the Interstate Commerce Commission? If this were not so, would it not lie within the power of the States and the State Railroad Commissions throughout the country—represented here in large numbers, eagerly awaiting the decision of this court—to impose enormous new capital expenditures upon the carriers subject to the Act, *without the approval of the Interstate Commerce Commission,* thus defeating the primary purposes and express provisions of the Act? To hold otherwise is to make the limited power of the States, with respect to *intrastate* freight and passenger service only, preserved in the Transportation Act, of greater effect and importance than the broad and comprehensive

powers over the carriers as instrumentalities of interstate commerce expressly conferred by the Act upon the Interstate Commerce Commission, although in preserving such limited power of the States with respect to *intrastate* commerce Congress was careful to provide that even such power was subordinate to the orders of the Interstate Commerce Commission made pursuant to the provisions of the Act.

In *Wisconsin R. R. Commission* v. *C., B. & Q. R. R. Co.*, 257 U. S., 563, this court reviewed the Transportation Act and held that, although there was no specific grant of power to the Interstate Commerce Commission to deal with State rates, yet the scheme of the Act and the power expressly given to the Commission to prevent undue, unreasonable, and unjust discriminations against interstate or foreign commerce, authorized it to remove such discriminations resulting from unduly low intrastate rates. The same principle of construction is applicable here. Moreover, we think that the order of the California Railroad Commission here in question is in conflict with certain specific provisions of the Transportation Act.

THE EFFECT OF THE ORDER OF THE CALIFORNIA RAILROAD COMMISSION, IF VALID, IS TO OUST THE INTERSTATE COMMERCE COMMISSION OF JURISDICTION OVER TERMINAL UNIFICATION VESTED IN IT.

(a) *Under paragraph 4 of section 3.*

In this paragraph Congress dealt specifically with terminal unification in the Transportation Act by empowering the Interstate Commerce Commission to bring the same about by requiring the use of the terminal facilities of one carrier by another carrier or carriers. Under the uncontradicted evidence and

under the findings of the California Commission the existing passenger terminal facilities of the Southern Pacific at Los Angeles are adequate to accommodate all three respondents for many years to come. It also appears from the evidence that the cost of terminal unification through utilizing the existing Southern Pacific facilities will be immeasurably less than under the plan ordered by the California Commission. Indeed no evidence should be required to demonstrate that the expense of providing a union station by this utilization of an existing station and the yards and facilities appurtenant thereto would be far less than would be necessitated by abandoning existing facilities and constructing new ones.

True no order has been made by the Interstate Commerce Commission requiring the use of Southern Pacific terminals as a union station, but this is immaterial. The effect of the order of the California Commission is to oust the Interstate Commerce Commission of jurisdiction, in an appropriate case, to bring about terminal unification through the use of the existing facilities of the Southern Pacific, even though it might be of the opinion that the public interest would be better served by this plan than by the plan of the California Commission. In point of fact the terminal situation at Los Angeles is now before the Interstate Commerce Commission on complaint brought by the City of Los Angeles. Even though the evidence was conflicting as to relative cost and advantage of the two plans, it would be for the Interstate Commerce Commission to determine the issues thus raised. The effect of this order of the California Commission is therefore to oust the Interstate Commerce Commission, first of a general jurisdiction expressly conferred, and second of a jurisdiction already invoked and dealing with the same subject-matter.

(b) *Under the consolidation provision.*

The consolidation provisions of the Act, already noted, not only require the Interstate Commerce Commission to prepare a complete plan of consolidation of all carriers into a limited number of systems, but prohibit the making of any consolidation except in accordance with that plan. That the plan of consolidation upon which the Commission is now at work necessarily involves a consideration of the terminal problem and of terminal unification at all important cities, and so at Los Angeles, is shown by the following extract from the report of Prof. Ripley, appointed by the Commission to work out a tentative plan of consolidation, and which is annexed as an appendix to the official tentative report of the Commission. (63 I. C. C. pp. 483-484):

> "Another far-reaching assumption is vital to the success of this plan. This has to do with the operation of terminals at great centers. Historically, there has been the greatest diversity of experience in this regard between the carriers of the country. Some roads are peculiarly fortified as to terminals, while possessing weak lines from an operating standpoint across the open country. For others, the reverse is true. Some companies, entering the field late, enjoy good locations as to lines, but have always worked under a handicap at the terminals. * * * To put together railway lines on the map without having constant regard to the possibility of free delivery or receipt at either end would indeed be futile. * * * But whatever the means adopted to this end, it is submitted that a proper adjustment of the various terminal situations, always of course for due compensation, is an important adjunct to any comprehensive consolidation plan. No recommendation,

therefore, as to particular terminal remedies is offered in this report. The subject technically is so involved, that it might well be made matter for a special investigation. Its bearing upon and relation to the subject of the division of through rates is as obvious as is its intimate connection with consolidation. * * * Consolidation can never be effectively brought about without the adoption of a comprehensive policy as to terminal ownership, operation, or both. It is herein assumed that free access will be somehow provided, either under the present emergency powers as contained in Section 1, paragraph 15c, or by the adoption under a consolidation plan of permanent arrangements in all of the important centers. * * * The important point, whatever the means adopted to this end, is that there should be unified operation and entirely free access to all participants alike."

The State is thus driven to the contention that the power to regulate in this important field resides at the same time in the state and in the federal commissions, and that the state may regulate even when the Interstate Commerce Commission is actually at work in the same field. The objections to contemporaneous or even successive regulation of this same subject by the state and federal authorities are obvious. If the other states should exercise their asserted power in like manner as the State of California has done, hundreds of millions of capital expenditures would be imposed upon the railroads the charges for which would burden interstate commerce, and all of which would be wasted except in the improbable contingency of the anticipation by the different states of the arrangements for joint use of terminals afterwards contained in the Commission's final plan of consolidation.

THE ORDER OF THE CALIFORNIA RAILROAD COMMISSION IN EFFECT REQUIRES THE CARRIERS TO CONSTRUCT NEW LINES OF RAILROAD AND TO EXTEND AND ABANDON EXISTING LINES OR PORTIONS THEREOF, IN CONFLICT WITH PARAGRAPH 18 OF SECTION 1 OF THE INTERSTATE COMMERCE ACT, AS AMENDED BY THE TRANSPORTATION ACT.

Paragraph 18 of section 1, quoted above, forbids the construction of new lines of road or the extension or abandonment of existing lines or any portion thereof, "*unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity" permit of such extension.*"

Opposing counsel have suggested certain reasons why this provision was put into the statute, but the language is general and is to be interpreted so as to accomplish the true purposes of Congress as shown by all the provisions of the Act. And one of the principal purposes of the Act, as above pointed out, is to insure the economical and efficient management of the roads under the supervision of the Interstate Commerce Commission as to their capital issues and expenditures.

We cannot agree with counsel that the provisions of paragraph (18) relate exclusively to "extending existing lines into new territory" (Brief p. 6).

The term "railroad" as used in the act includes "*all the road* in use by any common carrier operating a railroad * * * and all switches, spurs, tracks, *terminals* and *terminal facilities of every kind* * * * including all freight depots, yards and grounds * * *."

Reading paragraphs (18) and (22) together it will appear that "the extension of its line of railroad, or the construction of a new line of railroad * * * or the abandonment of all or any portion of a line of railroad * * *" embraces all such extensions and abandonments except "spur, industrial, team, switching or side tracks, located * * * wholly within one state * * *."

This construction is more imperative in cases such as this involving the expenditure of at least $32,000,000.

In *Detroit, etc. Ry. Co. v. Boyne City, etc Ry. Co.*, 286 Fed. 540, the District Court, E. D. Michigan, construed paragraph 18 to apply to 3¾ miles of track which the defendant company, doing an interstate business, proposed to build from a connection with its main line to shale beds owned by a cement company. It appeared that said track was also to be used by the public for loading and shipment of other commodities, and under the laws of the State would be subject to control of the State Public Utilities Commission, which had power to regulate train service thereon, and would also in all probability be later extended to other shale beds and for general purposes. In holding that this new trackage was an "extension" of a line of railroad within the meaning of paragraph 18, and that it was not a "spur" track within the meaning of paragraph 22 of section 1 of the Interstate Commerce Act, the District Court said (*Id.* pp. 547-548):

> "I will not at this time attempt to state a definition of the term 'spur track' which will necessarily be exact and complete in all cases, but in my opinion the distinguishing feature between 'extensions' and 'new lines,' on the one hand, and 'spur, industrial, team, switching or side tracks,'

on the other, as used in this statute, is this: That the former are tracks over which there are to be train movements in the sense that such movements are a part of the actual transportation haul from the shipper to the consignee, while the latter named tracks are for use in loading, reloading, storing, and switching the cars and other things merely incidental to the regular train haul. This track seems to be for the regular train haul in transportation proper rather than those incidental services characteristic of the tracks named as being excepted from the requirements of the act. *Considering all of the facts and circumstances of the present case*, including the proposed operation of entire trains over the proposed track and the main line of defendant in continuous transportation and without switching movements or charges; considering the sidings and public loading stations to be constructed and used in connection with said track; *considering the expense of the proposed undertaking;* considering the competitive character and results of the contemplated use and operation of said track and trains; considering the fact that the proposed track and train service will be between points where the competing railroad now maintains stations and between which the competing railroad now operates a regular train service, and in view of the entire record—I reach the conclusion that such proposed track has the characteristics of, and constitutes, not a 'spur track,' but a new 'line,' more specifically, an extension or a branch line. *Akers v. United N. J. R. & Canal Co.*, 43 N. J. Law, 110; *Illinois Central R. R. Co. v. Sioux Falls Quarry Co.*, 33 S. D. 63, 144 N. W. 724; *Memphis v. St. Louis & San Francisco R. R. Co.*, 183 Fed. 529, 106 C. C. A. 75 (C. C. A. 6).

"As the present line of defendant railroad is engaged in interstate commerce, and as this proposed extension, or branch, would, when com-

> pleted, become a part of such interstate commerce railroad, said branch would thereby itself become a part of interstate commerce. For that reason, *as well as because, even if it were entirely intrastate in character, its 'unremunerative operation would or might burden or cripple the main line* (of the defendant railroad) *and thereby affect its utility for service as an artery of interstate and foreign commerce,* (*State of Texas v. Eastern Texas Railroad Co.*, 258 U. S. 204, 42 Sup. Ct. 281, 66 L. Ed.), I cannot doubt that Congress constitutionally could, *and under the statutory provisions hereinbefore considered did,* make the construction of such track subject to the orders of the Interstate Commerce Commission and dependent upon the issuance by that body of the certificate prescribed in paragraph 18 of section 1 of the Interstate Commerce Act."

In the case at bar not only will a considerable portion of the main line of the Southern Pacific Company have to be "abandoned," but the main lines of all of the three companies concerned will have to be "extended" if they are required to construct a union passenger terminal station on the Plaza site, to say nothing of the enormous expense involved in the construction of such a station and its consequent burden upon interstate commerce.

In the *State of Texas v. Eastern Texas R. Co.*, 258 U. S. 204, this Court held that the Transportation Act of 1920, Sec. 402, pars. 18-20, did not authorize the Interstate Commerce Commission to permit a railroad who owned only one line situated wholly within a single State to abandon its line, so far as intrastate commerce was concerned. In so deciding, the court, speaking by Mr. Justice Van Devanter, said:

> "The road lies entirely within a single state, is owned and operated by a corporation of that state, and is not a part of another line. Its continued operation solely in intrastate commerce cannot be of more than local concern. Interstate and foreign commerce will not be burdened or affected by any shortage in the earnings, nor will any carrier in such commerce have to bear or make good the shortage. It is not as if the road were a branch or extension whose unremunerative operation would or might burden or cripple the main line and thereby affect its utility or service as an artery of interstate and foreign commerce."

This language plainly suggests that if the road in question had been a part of an interstate system and its continued operation might burden or cripple the main line and thereby affect its utility or service as an artery of interstate and foreign commerce, the decision of the court would have been different and the power of the Interstate Commerce Commission over the abandonment of the road for intrastate as well as interstate business upheld. It would seem that this is a clear recognition of the principle for which respondents are here contending, namely, that Congress in the Transportation Act of 1920 has conferred upon the Interstate Commerce Commission full power and authority to pass upon all questions relating to the lines of common carriers engaged in interstate commerce, including a portion located within a single state.

Conversely, the language of the opinion just quoted implies that a State railroad commission would have no power to authorize or require the abandonment of a line of railway located entirely within its limits, which is a material and important part of an interstate system, either as it relates to intrastate business and more

particularly the interstate business of such a carrier, especially where orders, such as were entered in the cases at bar, relate to railways whose lines serve many states, and not only directly interfere with and burden interstate commerce, but would prevent the carriers from transporting a large volume of interstate business.

It is to be noted that Congress has safeguarded the interests of the States, both as to the extension and abandonment of existing lines, and the construction of new lines, by requiring (paragraph 19), notice of any application for any such action by the Interstate Commerce Commission to be given the Governor "of each State in which such additional or extended line of railroad is proposed to be constructed or operated, or all or any portion of a line of railroad, or the operation thereof, is proposed to be abandoned, with the right to be heard as hereinafter provided with respect to the hearing of complaints or the issuance of securities." This provision, it will be observed, is a further recognition of the fact that the power of the Interstate Commerce Commission in this regard extends to matters affecting intrastate commerce.

THE INTERSTATE COMMERCE COMMISSION HAS ITSELF CONSTRUED PARAGRAPH 18 OF SECTION 1 AS APPLICABLE TO UNION STATION PROJECTS—CLEVELAND PASSENGER TERMINAL CASE.

In the cases decided by the Interstate Commerce Commission, referred to in the brief under review (p. 7) the Commission held that the relocation of a few tracks of a carrier, because of their minor nature and the fact that the public service and convenience was

not substantially affected thereby, did not come within the scope of paragraph 18. But this is far from saying that this paragraph does not cover such radical changes in the existing trackage, terminals and stations of the three carriers concerned as will be required by the order of the California Railroad Commission here involved.

The Interstate Commerce Commission has itself construed paragraph 18 of section 1 as applying to the construction of new union passenger terminal facilities and of the line extensions necessary to reach the same. (*Cleveland Passenger Terminal Case*, 70 I. C. C., 342, 659.) True the matter of statutory interpretation is not discussed in either the original or supplemental opinion. The assumption of jurisdiction, however, was in itself a practical construction of the Act by the body charged with its administration, and, while not controlling, is entitled to great weight (*Boston & Maine v. Hooker*, 233 U. S. 97, 118; *Texas & Pac. Ry. v. Abilene Cotton Oil Co.*, 204 U. S. 426.

That case, like this, involved the creation of a new union passenger terminal and of line extensions within the city, necessary to reach the new terminal, all at a cost of over $60,000,000. In its first opinion the Commission refused to issue a certificate of convenience and necessity, saying (70 I. C. C. 352):

> "Summing the matter up, we are not persuaded by the evidence now before us that the terminal problem has received adequate consideration in the Public Square plan, either from the local or the railroad point of view; that this plan is compatible with the public interest, in its present form; or that we ought, by granting the certificates of public convenience and necessity which are sought, to lend our sanction to the enormous expenditure

of capital which the plan involves. Possibly the presentation of further evidence or the modification of the plan in various particulars might make possible a different conclusion, but it is the conclusion which we are constrained to reach upon the record now before us. It should further be said that dismissal of the pending applications need not involve delay in terminal improvements at Cleveland, for the record makes it clear that the railroads feel that they are so situated financially at the present time that the immediate development of a plan of the scope proposed would not be practicable."

Upon rehearing and after taking of further testimony the Commission in its second opinion authorized the issuance of a certificate of public convenience and necessity, saying (*id.*, 661-2):

> "The proposed plan affords an additional route through Cleveland for the through business of the applicants and provides a separate and independent passenger route from Collinwood on the east to Berea on the west, with the great advantage of completely segregating the passenger movement through the city, thus leaving the full capacity of the lake front tracks and of the Cleveland Short Line available for freight movement only. There is no evidence that any other feasible plan would accomplish a like result. *The prime importance of making such a provision for the future may be deemed sufficient to warrant imposing upon the transportation revenues of the country any reasonable financial burden which the plan may involve. An analysis of the prospective capital charge does not reveal an unreasonable burden on future traffic. Considering the importance of the results to be attained, we cannot say that the expenditures proposed are out of proportion to the*

benefits which interstate commerce will derive therefrom."

If the Commission in that case had adhered to its original opinion denying a certificate of public convenience and necessity because not convinced that the resulting public convenience was sufficiently great to justify the enormous burden of capital charges forever placed upon commerce by this project, is it conceivable that the State Commission of Ohio could have compelled the carriers, by order, to construct the proposed union passenger terminal and incur the expense which the Interstate Commerce Commission had found was not justified?

In the *Cleveland Terminal Case* there was before the Commission a substitute plan presented by the opponents of the carriers. In that case, as in this, therefore, two possible plans were under consideration. Is it conceivable that after the second opinion of the Commission authorizing the issuance of a certificate of public convenience and necessity, the State Commission of Ohio, believing the other plan to be more in the public interest, could have by order required the carriers to establish a union passenger terminal according to the other plan? This case illustrates the resulting conflict of authority if the States retain the powers asserted by the California Commission.

The *Cleveland Case* and this case together likewise illustrate how futile has been the effort of Congress to give the Commission control of large capital expenditures involved in new railroad construction and thereby prevent waste, if paragraph 18 of Section 1 does not apply to the construction of those extensions, new lines and facilities involved in the establishment of a new union station in a great city. Such a project neces-

sarily involves the creation and construction of a new terminal railroad (usually brought about by the formation of a separate company) the length of which may be comparatively short, but the cost of which project, as a whole, runs into the tens of millions and may well equal the cost of a line several hundred miles long.

THE ORDER OF THE CALIFORNIA COMMISSION IS INVALID BECAUSE ITS EXECUTION AND ENFORCEMENT CONFLICT WITH THE PROVISIONS OF SECTION 20a REGULATING THE ISSUE OF SECURITIES.

It is a matter of common knowledge that capital expenditures of upwards of $30,000,000 require financing through security issues over which the Interstate Commerce Commission is given exclusive control. It may be said that the carriers are at perfect liberty to apply to the Interstate Commerce Commission for authority to issue the necessary securities. The order of the California Commission, however, if a valid exercise of State sovereignty, must be capable of enforcement and execution *ex proprio vigore*. If for its execution the sanction of the Interstate Commerce Commission is required, it ceases to be a valid order and becomes a recommendation only. Nor has the State any authority to require a carrier to apply to the Interstate Commerce Commisison for the necessary authority.

Furthermore under paragraph 2 of section 20a the power of the Interstate Commerce Commission to authorize the issuance of securities is thus specifically limited.

> The Commission shall make such order only if it finds that such issue or assumption: (a) is for

> some lawful object within its corporate purposes, and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the carrier of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose.

By paragraph 4 every application therefor must be made under oath by an executive officer having knowledge of the facts, and by paragraph 6 notice of all such applications must be given to the Governor of each state in which the applicant carrier operates (not merely the Governor of the state in which the improvements to be financed by such securities are to be made) and state commissions are specifically given the right to appear before the Interstate Commission to make such representations as they may deem just for preserving and conserving the rights and interests of their people and states respectively. Wholly aside from the stultification involved in requiring a railroad officer to submit under oath as necessary and appropriate issuance of securities for purposes which he believes to be neither, the Commission itself is specifically limited to the authorization of securities for purposes which it finds to be necessary or appropriate for or consistent with proper performance of public service and which will not impair its ability to perform that service. If the order of the California Commission is valid then this limitation is rendered void as to all securities which a carrier is required to issue to carry out the orders of a state commission. If the California Commission may require the making of these expenditures it has itself appropriated the power and performed the duty of

determining whether the expenditures are necessary and appropriate, and whether they will increase or impair the ability of the carrier to perform public service, which under section (20a) devolves upon the Interstate Commerce Commission, and the only authority left in that body is to say whether such expenditures, when made, may be financed by the issuance of securities.

The provisions of the act contemplate that the Interstate Commission may receive the views of the state commissions thereon, but decision manifestly rests with the Interstate Commission. Furthermore, in providing that the Governors of all states in which the carrier operates shall be notified as well as the Governor of the state in which the expenditures proposed to be financed by security issues are to be made, Congress manifestly recognized that wasteful expenditures on one section of the carrier's line might impair its ability to perform its public service generally, or that expenditures convenient and appropriate for one section of its line, if made, might impair its ability and its credit so as to prevent other improvements elsewhere which were more necessary. Congress has not, it is true, given the Commission control over capital improvements in a managerial way, but it has through paragraph 18 of section 1 and section 20a evinced a clear purpose to empower the Commission to prevent waste in capital expenditures.

RESERVED POWER OF THE STATES.

What has been said disposes of the argument, also insisted upon in the brief to which this is a reply, based upon the proviso in paragraph 17 "that nothing in this act shall impair or affect the right of a State

in the exercise of its police power to require just and reasonable freight and passenger service for *intrastate* business, except in so far as such requirement is inconsistent with any lawful order of the Commission made under the provisions of this act."

Giving the broadest possible construction to this proviso, how can it be construed to authorize the State to require the three respondent companies, whose business is largely *interstate*, to establish a union passenger terminal at a new location, at an expense estimated by the Commission's own engineers at over $32,000,000 (Tr. 53) and found by the Commission to range from twenty-five to forty-five million dollars? Is such an order a due exercise of the power reserved by said proviso to the States "to require just and reasonable freight and passenger service for *intrastate* business?"

Counsel seems to be contending that this proviso operates to enable the States, under the guise of regulating *intrastate* commerce, to impose practically any burden they see fit upon interstate carriers by railroad within their limits, no matter how seriously it affects the capital expenditures of such carriers and their revenues, unless the State regulations run counter to some express order of the Interstate Commerce Commission. What the proviso, with its qualifying clause, really means is that the State may, in the exercise of their police powers, require just and reasonable freight and passenger service on *intrastate* business, provided the State regulations do not conflict with some lawful order of the Interstate Commerce Commission affecting *that* business. In other words, the proviso recognizes the fact that in the Transportation Act Congress has given the Interstate Commerce Commission power to make regulations and

issue orders which may affect *intrastate* business. *Taken as a whole the proviso is a limitation and not an extension of the State's authority.*

The North Carolina and Oklahoma decisions cited in the brief under review are also based upon a misconception of the purpose and effect of the proviso to said paragraph 17, and the failure of those courts to recognize the full effect of the power of the Interstate Commerce Commission over the matter of terminal facilities growing out of the new and extended powers conferred upon it by the Federal Transportation Act.

It will be noted, on the other hand, as stated on p. 36 of said brief, that the Supreme Court of South Carolina, in *Shealy, et al. v. Southern Railway,* not yet reported, has adopted the view expressed by the Supreme Court of California in the case at bar, and held that since the Transportation Act action by State authorities requiring "capital expenditures" by interstate carriers is "interdicted."

The legislative history of the Transportation Act to which counsel refer in the brief under review merely shows that the framers of said Act thought it advisable to let remain in the States the regulation of interstate railroads as to certain matters, of a local character, which were of minor importance, though considerable, perhaps, in the aggregate, provided, however, that, even as to such matters, the State regulations did not conflict with any lawful orders of the Interstate Commerce Commission. To say that the history of the Transportation Act, or of this proviso, supports the right of the States to compel the carriers to abandon existing terminal stations and construct union terminal stations at the expense of millions and millions of dollars, is in large measure to authorize

the States to defeat the main purposes of the Transportation Act, which were to require that these great instrumentalities of interstate commerce be run as economically as possible consistent with their proper development for the needs of transportation (see language of par. 3 of Sec. 15a), and under the direct supervision and control, as to their capital expenditures, of the Interstate Commerce Commission.

The motions to advance on file herein disclose that subsequent to the granting of the petition for writ of certiorari and the issuance of the writs, the City of Los Angeles instituted a proceeding before the Interstate Commerce Commission relating to the identical matter covered by the orders entered by the State Commission. Thereafter the Interstate Commerce Commission conducted an investigation at which the entire transcript before the California Commission was introduced in evidence and the hearing was concluded.

In the event counsel's construction of the proviso is correct, it would result in the absurd conclusion that in the event the Interstate Commerce Commission should conclude to deny the petition in the case pending before it upon the ground that if the carriers were obliged to incur the expense of consolidating their facilities and erecting a union depot in the manner ordered by the State Commission, the expense involved therein would impair the ability of the respondents to perform their duty to the public, the State Commission could then enforce their orders because they were not "inconsistent with any lawful order of the (Interstate Commerce) Commission made under the provisions of this (Interstate Commerce) act."

EVEN ASSUMING THAT THE STATES POSSESS THE POWER TO COMPEL CARRIERS SUBJECT TO THE INTERSTATE COMMERCE ACT TO CONSTRUCT JOINT TERMINALS FOR BOTH INTERSTATE AND INTRASTATE COMMERCE, THE ORDER OF THE CALIFORNIA RAILROAD COMMISSION IS SO ARBITRARY, UNJUST AND UNREASONABLE AS TO AMOUNT TO A TAKING OF PRIVATE PROPERTY FOR PUBLIC USE, WITHOUT COMPENSATION, IN VIOLATION OF THE FEDERAL CONSTITUTION.

In any aspect of the matter, whatever power the State Railroad Commission may possess over the construction of railroad terminals, and especially union terminals, its exercise of such power must pass the scrutiny of the courts, *and particularly of this court*, as to its reasonableness.

> *Oregon R. R. & N. Co. v. Fairchild*, 224 U. S. 510, 529.

The reasonableness of the order of the California Railroad Commission involved in this case is therefore a Federal question open to review by this court.

In the case just cited this court held that even where the order of a State railroad commission "involves the use of property needed in the discharge of those duties which the carrier is bound to perform," "the matter of expense is 'an important criteria to be taken into view in determining the reasonableness of the order,'" *and that where "the proceeding is brought to compel a carrier to furnish a facility not included within its absolute duties, the question of expense is of more controlling impirtance."* (*Id.*, 529.)

Can the establishment of a union terminal be said to be one of the *absolute* duties of common carriers? Is there any imperative duty resting upon two or more such carriers to abandon existing railroad terminal facilities, which are adequate or can easily be made adequate for the needs of their respective businesses, and so far as the Southern Pacific and Santa Fe are concerned are adequate to accommodate the entire traffic of all three lines, in order to establish, at enormous expense, a union terminal somewhere else to gratify the civic pride of a city?

THIS IS NOT A GRADE CROSSING CASE, NOTWITHSTANDING THE EFFORT OF THE CALIFORNIA RAILROAD COMMISSION TO MAKE IT ONE.

This fact distinguishes this case from *Erie R. R. Co. v. Board of Public Utility Commissioners*, 254 U. S. 394, and *Denver & Rio Grande R. Co. v. Denver*, 250 U. S. 242.

An examination of the orders of the California Railroad Commission under review show that it has been carefully framed with a view to make it appear that the construction of a union passenger station on the Plaza site is indispensable to the proper elimination of dangerous railroad grade crossings in the city of Los Angeles. (See Findings and Order of Commission, Tr. p. 142, *et seq.*)

This was done because the Commission recognized that the only authority conferred by the Legislature of the State upon it upon which it could possibly base such an order was that contained in Section 43 of the Public Utilities Act of the State authorizing the Com-

mission "to make orders binding upon the railroad companies under its supervision, to abolish grade crossings of the public streets of a city and to order a separation of grades so that the railroad and street shall not be upon the same level. (*Civic Center Ass'n. v. Railroad Commission,* 175 Cal. 441, cited at p. 41 of Transcript in this case.)

In overruling the orders of the Commission, the Supreme Court of California said (Tr. p. 233) that—

> "We can perceive no indispensable relation between the elimination of grade crossings and the establishment of union depot facilities, nor can we see any insurmountable difficulty why jurisdiction over the matter of eliminating grade crossings may not be exercised in a proper case consistently, and it may be concurrently, with the exercise of the authority which is vested by the Act of Congress of 1920 in the Interstate Commerce Commission over the subject of union terminal depot facilities."

This view is supported by the evidence upon which the Commission chiefly relied for its findings and order in these cases, namely, the "Report on Railroad Grade Crossings Elimination and Passenger and Freight Terminals in Los Angeles," by Richard Sackse, chief engineer of said Commission, dated July 31, 1919, referred to in the Record as Commission's Exhibit No. 1 (Tr. 46). In said report the chief engineer of the Commission said (Opinion, Tr. 49):

> "We have found *three sites adapted to the location of such a station,* viz: The Plaza site, the Santa Fe station site, and the Southern Pacific station site."

Manifestly, therefore, the establishment of a union passenger terminal on the Plaza site was not necessary to the proper elimination of dangerous crossings on the Santa Fe and Southern Pacific lines.

The establishment of a union passenger terminal in Los Angeles not being necessary for the due protection of the public, the order of the California Railroad Commission here in question cannot, in any view of the case, be regarded as a proper exercise of the police power of the State, but amounts to an attempt to appropriate the property rights of the carriers concerned for the benefit of the people of the State, without compensation, and is void under both the Federal and the State Constitutions.

As held in *Atlantic Coast Line v. N. Car. Corp. Com'n.*, 206 U. S. 1 (headnote):

> "The public power to regulate railroads and the private right of ownership of such property coexist and do not the one destroy the other; and where the power to regulate is so arbitrarily exercised as to infringe the rights of ownership the exertion is void because repugnant to the due process and equal protection clauses of the Fourteenth Amendment."

CONCLUSION.

In conclusion we submit that the construction of the Transportation Act of 1920 sought to be maintained by the petitioner and other State Railroad Commissions would defeat the purposes of that Act as it has been interpreted in recent decisions of this court.

Wisconsin R. R. Comm. v. C. B. & Q. R. R. Co., 257 U. S. 563.
New England Divisions Case, 261 U. S. 184.

Those decisions hold that Congress, in the exercise of its indisputable constitutional authority, has taken such full control of "its interstate commerce system" as to render it impossible for the States, in the exercise of any police power that they may possess with respect to *intrastate* commerce, to embarrass the operations of the Interstate Commerce Commission in carrying out the purposes of Congress to provide an adequate transportation system for the country, to be efficiently and economically operated and developed under the supervision and control of the Commission.

In its opinion in the Wisconsin Railroad Commission case the court said (257 U. S. p. 589):

> "Counsel for the appellants have not contested the constitutional validity of the statute construed as we have construed it, although the counsel for the state commissions whom we permitted to file briefs as *amici curiae* have done so. The principles laid down by this court in the *Minnesota Rate Cases*, 230 U. S. 352, 432, 433, the *Shreveport Case*, 234 U. S. 342, 351, and the *Illinois Central Case*, 245 U. S. 493, 506, which are rates cases, and in the analogous cases of *Baltimore & Ohio R. R. Co. v. Interstate Commerce Commission*, 221 U. S. 612, 618; *Southern Ry. Co. v. United States*, 222 U. S. 20, 26, 27; *Second Employers' Liability Cases*, 223 U. S. 1, 48, 51, we think, leave no room for discussion on this point. Congress in its control of its interstate commerce system is seeking in the Transportation Act to make the system adequate to the needs of the country by securing for it a reasonably compensatory return for all the work it does. The States are seeking to use that same system for intrastate traffic. That entails large duties and expenditures on the interstate commerce system which may burden it unless compensation is received for the intrastate business rea-

sonably proportionate to that for the interstate business. Congress as the dominant controller of interstate commerce may, therefore, restrain undue limitation of the earning power of the interstate commerce system in doing state work. The affirmative power of Congress in developing interstate commerce agencies is clear. *Wilson v. Shaw*, 204 U. S. 24; *Luxton v. North River Bridge Co.*, 153 U. S. 525; *California v. Central Pacific R. R. Co.*, 127 U. S. 1, 39. In such development, it can impose any reasonable condition on a State's use of interstate carriers for intrastate commerce it deems necessary or desirable. This is because of the supremacy of the national power in this field."

Respectfully submitted,

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1922

No. 283

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,
Petitioner,

vs.

SOUTHERN PACIFIC COMPANY (a corporation) and SOUTHERN PACIFIC RAILROAD COMPANY (a corporation),
Respondents.

MOTION TO ADVANCE CAUSE.

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1922

No. 984

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,
Petitioner,

vs.

SOUTHERN PACIFIC COMPANY (a corporation) and SOUTHERN PACIFIC RAILROAD COMPANY (a corporation),
Respondents.

MOTION TO ADVANCE CAUSE.

Both parties herein join in moving this Honorable Court to advance this cause for hearing as near the beginning of the October Term of 1923 as may be convenient. In support of this motion, the following brief statement of the matter involved and of the reasons for this application are respectfully submitted.

FACTS AND ISSUES.

The Railroad Commission of the State of California acting pursuant to the provisions of a statute of California known as the Public Utilities Act found after public hearings and the taking of evidence, that public convenience and necessity require the construction jointly by three carriers, the Southern Pacific, the Santa Fe and the Los Angeles & Salt Lake Railroads, of a new union passenger depot in the City of Los Angeles. In the same order and upon similar findings of public convenience and necessity, the Commission ordered the elimination of seventeen (17) specified grade crossings of the Southern Pacific line in the City of Los Angeles by the cessation of train operations, longitudinally, of trains along and upon Alameda Street and the elimination of six (6) specified grade crossings of the Santa Fe and Salt Lake lines by the construction of viaducts.

The Supreme Court of California, in a proceeding under the laws of California for a judicial review of the orders of the Railroad Commission, ruled that the authority vested in the State Railroad Commission by the Public Utilities Act (Cal. Stat. 1915, Chap. 91), to require the railroads to do the things specified in the order, has been superseded by the enactment of the Transportation Act of 1920, amendatory to the Interstate Commerce Act.

Following this decision of the State Supreme Court, a petition for certiorari was presented to

this Honorable Court on the 16th day of April, 1922 and granted by an order made herein the 23rd day of April, 1922.

The issue thus presented is one of jurisdiction.

GENERAL PUBLIC INTEREST INVOLVED.

The question is of general interest, both to the railroads throughout the United States and to the Interstate Commerce Commission and the various State Commissions exercising regulatory powers over public utilities. Since the institution of this proceeding before this Honorable Court, it has been called to attention that similar cases have arisen in Oklahoma, South Dakota and Louisiana. Several State Commissions have indicated their interest in this question and the National Association of Railway and Utilities Commissioners, representing all State Commissions, has instructed its general solicitor to ask the permission of this Honorable Court to participate in this case, as amicus curiae, for the purpose of presenting the views of the association on this question of jurisdiction.

The Interstate Commerce Commission is also confronted with the same question of jurisdiction which is now before this Honorable Court for final determination. After the decision by the Supreme Court of California, the City of Los Angeles filed a complaint before the Interstate Commerce Commission invoking its powers to order the erection, by

the three railroads in question, of a union passenger depot in Los Angeles. It seems clear that the decision by this Honorable Court of the case at bar should precede any final action by the Interstate Commerce Commission on the complaint of the City of Los Angeles.

Los Angeles is a rapidly growing community of more than 600,000 population. The question of improved depot facilities has been under consideration by the Railroad Commission of California since 1916. Pending the final and authoritative determination by this Honorable Court of the question of jurisdiction here involved, no comprehensive plans can be adopted and carried into effect by the carriers or by the State of California or the City of Los Angeles to meet the transportation needs of the traveling public in Los Angeles.

By reason of the importance and very general interest in the question here presented, we respectfully join in asking that this case be advanced for hearing.

Dated, San Francisco,
May 26, 1923.

Respectfully submitted,

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1923

No. 284

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,
Petitioner,

vs.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY (a corporation),
Respondent.

CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

BRIEF FOR PETITIONER.

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1923

No. 284

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,
Petitioner,

vs.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY (a corporation),
Respondent.

CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

BRIEF FOR PETITIONER.

There is involved in these proceedings the question of the validity of an order of the Railroad Commission of California directing three railroads (the Southern Pa-

cific, the Santa Fe and the Salt Lake) to join in the erection of a new union passenger depot and the elimination of certain grade crossings in the City of Los Angeles.

The facts in the case, together with a map showing the location of the three railroads in Los Angeles, the area within which a union depot was ordered to be erected, and also the location of the grade crossings proposed to be eliminated, are set forth in the petition for writ of certiorari and brief in support thereof on file in these proceedings. It is deemed unnecessary, therefore, to repeat at length the facts and circumstances out of which the case arose.

I.

THE PRIMARY ISSUE OF JURISDICTION.

The Railroad Commission based its order upon specific findings that public convenience and necessity requiring the erection of a union depot both as a means for more adequate railroad facilities and as a measure essential to the elimination of certain dangerous grade crossings. The Supreme Court of California, in a judicial review of the Commission's order, concluded that complete jurisdiction to determine the necessity for the erection of new railroad facilities was vested in the Interstate Commerce Commission by the provisions of the Transportation Act of 1920, and that the power of the Railroad Commission under the laws of California to make the order in question had been superseded by this assump-

tion of broader jurisdiction by the Interstate Commerce Commission.

The state court based this decision upon section 15a, section 5, section 1, subdivisions 18 to 22, inclusive, and section 3 of the Interstate Commerce Act as amended in 1920, holding that these particular sections had deprived the State Commission of the power it previously had to make the order under review. Each of these sections of the act is discussed and a complete argument on the question of jurisdiction is presented in petitioner's brief in support of the petition for writ of certiorari herein. An extended reargument upon this phase of the case is deemed unnecessary here.

Supplementing the points already presented and in order to show more clearly that the Commission's order did not contravene any of the sections of the Interstate Commerce Act relied upon by the state court, we desire to set forth in summary form an exact statement of what the order of the Railroad Commission does and does not do.

What the Commission's order requires:

1. The procurement jointly by the three carriers of grounds for a union depot within the area specified.

2. The filing of plans and specifications jointly by the three carriers for the construction of an adequate union passenger depot. (Provisions were made in the order as to apportionment of cost and time of construction.)

3. The actual construction of the depot in accordance with such plans.

4. The elimination of 17 specified grade crossings on the Southern Pacific line by the cessation of train operations longitudinally at grade along and upon a certain street (Alameda Street).

5. The elimination of 6 specified grade crossings on the Santa Fe and Salt Lake lines by the construction of viaducts.

The order does not require:

1. The construction or extension of any line of railroad.

2. The abandonment of any line of railroad.

3. The use by one railroad of the terminal facilities or main line and other trackage of another railroad.

4. The formulation of a plan for consolidated railroad systems.

5. The acquisition of facilities for the interchange of traffic.

6. The emergency utilization of cars or of terminal properties.

7. The regulation of car service.

The Commission's order is set forth in full on pages 146 to 150, inclusive of the transcript of record.

We respectfully submit that the Supreme Court of California erred in its interpretation of the Commission's order, and also, in the application and construction of the provisions of the Interstate Commerce Act.

II.

POINTS RAISED BY THE SUPPLEMENTAL RECORD.

It was originally intended that the issue of jurisdiction presented by the petition for certiorari and the transcript of record filed therewith should be the sole issue submitted in these proceedings. Attention has later been directed to certain decisions of this honorable court which have led counsel to conclude that it was proper to submit a supplemental stipulated record containing so much of the transcript of evidence presented to the court below as might be necessary for a complete consideration by the Supreme Court of all points in the case, involving the alleged denial of rights under the Federal Constitution even though these points were not passed upon by the court below.

Southern Railway Co. et al. v. Watts, 260 U. S. 192, 193;

Atlantic Coast Line R. Co. v. Daughton, (decided June 4, 1923) U. S. Supt. Ct. Adv. Op. 67 L. ed. No. 17, p. 681.

Greene v. Louisville & Interurban R. Co., 244 U. S. 499.

Appleby v. Buffalo, 221 U. S. 524, 529.

There has, therefore, been filed a supplemental record, consisting of selected portions of the transcript of testimony and certain important exhibits which counsel have stipulated shall constitute the entire record on review.

The following questions arising from facts set forth in this supplemental record were presented to the state court:

1. Was the Commission's finding that public convenience and necessity require the erection of a union depot consistent with, and supported by, the evidence?

2. Were the Commission's findings on questions of public convenience and necessity final and conclusive under the California law?

3. Has the Commission, under the police power of the state, authority to order the railroads to erect a union depot as an essential measure for the elimination of dangerous grade crossings?

4. Does the Commission's order, in requiring the construction and use of the new union depot and the abandonment of the present facilities deprive the railroads of property in violation of the guarantees under the Federal Constitution?

5. Does the Commission's requirement that the operation of trains on Alameda Street be eliminated after the construction of the union depot, impair the obligation of a contract contained in a certain franchise permitting the railroads to operate trains on Alameda Street?

6. Is the Commission's order invalid because it may require the railroads to expend large sums of money and to exercise the power of eminent domain in acquiring the necessary land and constructing a union depot?

These questions were not passed upon by the Supreme Court of California, the court holding that "this disposition of the primary inquiry" (the Federal question of jurisdiction) "renders unnecessary a discussion of the several subsidiary questions presented for our consideration by the briefs of counsel herein." Assuming that it

is proper to present for consideration all of the issues involved in the proceedings under review, we respectfully submit herewith the following argument upon these questions.

1. Was the Commission's finding that public convenience and necessity require the operation of a union depot consistent with, and supported by, the evidence?

The Commission's order was based upon four specific findings of fact:

(a) The Commission found that existing grade crossings (naming them) are unsafe, and that the continued use of these crossings, by the movement of trains by the respective carriers using such crossings, endangers the employees of the carriers and the public generally, and that public interest, safety, convenience and necessity require that such dangerous conditions be eliminated.

Included in the crossings enumerated by this finding are the 17 crossings of the Southern Pacific line on Alameda Street. The correctness of this finding of fact has never been disputed.

(b) The Commission found that the existing passenger station of the Santa Fe and Salt Lake railroads "are improper, inadequate and insufficient", and that the existing depot of the Southern Pacific Company "does not conform to the plan for the elimination of dangerous railroad crossings in the City of Los Angeles."

(c) The Commission found that in order to eliminate the dangerous grade crossings enumerated and to provide adequate and sufficient passenger station facilities for the three railroads in question "it is necessary and

the public safety, convenience and necessity require that a new structure or structures, to-wit: a union passenger station and buildings incidental thereto, be erected" by the respondent railroads, and that in connection therewith such improvements and changes in existing facilities of said railroads be made as might be reasonably necessary and incidental to the use of the union passenger station "and that all railroad traffic be eliminated from Alameda Street, between College Street and 15th Street, inclusive, in the City of Los Angeles, except local freight switching".

(d) The Commission found that public safety, convenience and necessity require that the location and site of the union passenger station referred to in the foregoing findings be within a designated area approximately one-half mile square within the City of Los Angeles.

This area is traversed by the main lines of two of the carriers, and is separated from the main line of the third carrier by a dry river bed less than 200 yards wide.

As shown by the supplemental transcript of record on file herein, the Commission's hearings and investigations preceding its findings involved a period of some four years. At its numerous hearings, in which many days' time was consumed, and printed transcripts of testimony of approximately 3000 pages compiled, the Commission heard evidence upon all questions involved in the above findings. In addition to the final report compiled by the

Commission's engineering department (Commission's Exhibit No. 1 filed herein with the supplemental record), plans were compiled and submitted by four engineers of prominence and unquestioned standing. These engineers also testified at the hearings, and excerpts from their testimony are contained in the supplemental transcript of record filed herein.

The questions involved in the above findings were largely questions requiring expert opinion. Four engineers, including the chief engineer of the Railroad Commission, testified definitely that a union depot was essential both for the proper elimination of grade crossings and for the convenience of the traveling public; that continued use of the present Southern Pacific depot was inconsistent with an adequate plan for the elimination of grade crossings; that the Santa Fe and Salt Lake depots were both inadequate and inconveniently located, and that the site of the union depot should be at or near the place finally selected and designated by the Commission. These engineers were Mr. Hawgood, Mr. Storrow, Mr. Barnard and the chief engineer of the Railroad Commission, Mr. Sachse. Mr. Hawgood's testimony will be found beginning on pages 316 and 353; Mr. Storrow's on pages 258 and 543; Mr. Barnard's on page 340, and Mr. Sachse's on pages 423 and 534 of the supplemental transcript of record. Also, the summary of this testimony and the various plans proposed are set forth in the report of the Commission's Engineering Department (Commission's Exhibit No. 1).

In addition to the evidence just referred to, the Commission made a complete inspection of the premises in

the presence of all of the parties and under the guidance of some of the engineers (including the respondents' engineers), who appeared as witnesses. The record of this inspection is also set forth in the supplemental transcript of record, beginning page 573. Such a view of the premises alone was sufficient to support the Commission's finding.

Boesche v. City of Naperville, (Ill.) 48 N. E. 1061;

Trustees of Schools of Lake Co. v. Griffith, 105 N. E. 760;

City of Tacoma v. Hansen, 110 Pac. 426;

Lewis Em. Dom., Vol. II, Sec. 776.

The necessity for the elimination of train operations on Alameda Street was recognized by the Southern Pacific and Salt Lake railroads, whose application for the establishment of a union depot at the present site of the Southern Pacific station was heard in connection with the proceedings resulting in the Commission's order. (Application No. 3346, Transcript of Record, p. 31, Supplemental Transcript, Appendix 544-572.) These two railroads urged the acceptance of their plan for the union depot instead of that finally adopted by the Commission. It was rejected, however, not only because it did not include the Santa Fe, but also because it afforded only a partial solution of the difficulties sought to be eliminated.

We respectfully submit that the supplemental record filed herein shows that the Commission's findings of fact, in all respects, were not inconsistent with, but on the contrary, were fully supported by, the evidence.

2. Were the Commission's findings on questions of public convenience and necessity final and conclusive under the California law?

The provision under the laws of California for judicial review of the Commission's orders is contained in California Statutes, 1915, Chapter 91 (The Public Utilities Act), section 67 of which reads as follows:

> "67. Within thirty days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the rendition of the decision on rehearing, the applicant may apply to the Supreme Court of his state for a writ of certiorari or review (hereinafter referred to as a writ of review) for the purpose of having the lawfulness of the original order or decision or the order or decision on rehearing inquired into and determined. Such writ shall be made returnable not later than thirty days after the date of the issuance thereof, and shall direct the commission to certify its record in the case to the court. On the return day, the cause shall be heard by the Supreme Court, unless for a good reason shown the same be continued. No new or additional evidence may be introduced in the Supreme Court, but the cause shall be heard on the record of the commission as certified to by it. The review shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the Constitution of the United States or of the State of California. The findings and conclusions of the commission on questions of fact shall be final and shall not be subject to review; such questions of fact shall include ultimate facts and the findings and conclusions of the commission on reasonableness and discrimination. The commission and each party to the action or proceeding before the commission shall have the right

> to appear in the review proceeding. Upon the hearing, the Supreme Court shall enter judgment either affirming or setting aside the order or decision of the commission. The provisions of the Code of Civil Procedure of this State relating to writs of review shall, so far as applicable and not in conflict with the provisions of this act, apply to proceedings instituted in the Supreme Court under the provisions of this section. No court of this state (except the Supreme Court to the extent herein specified) shall have jurisdiction to review, reverse, correct or annul any order or decisioin of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere with the commission in the performance of its official duties; *provided*, that the writ of mandamus shall lie from the Supreme Court to the commission in all proper cases."

It is to be noted that the above statute specifically provides that "the findings and conclusions of the Commission on questions of fact shall be final and not subject to review". In numerous decisions rendered both before and after the decision in the cases under review, the Supreme Court of California has recognized the force and validity of this provision as to the conclusiveness of the Commission's findings.

In the case of *Oro Electric Corp'n. v. Railroad Commission*, 169 Cal. 466, the California Supreme Court affirmed an order of the Railroad Commission denying the Oro Electric Corporation a certificate of public convenience and necessity to construct certain electric lines. Discussing the question of the Commission's finding of fact, and citing section 67 of the Public Utilities Act, the court said:

"Here the Commission found the ultimate fact that the public convenience and necessity did not require the exercise of the privileges in controversy, and neither the sufficiency of the evidence, nor the soundness of the reasoning, upon which that finding was based, can be considered in this proceeding."

Similar rulings were made in the following cases:

Clemmons v. Railroad Commission, 173 Cal. 254, 258;

Sexton v. Atchison, Topeka & Santa Fe Ry. Co., 173 Cal. 760;

San Leandro v. Railroad Commission, 183 Cal. 229, 239.

In the recent case of *Live Oak Water Users Assn. v. Railroad Commission,* Vol. 66 Cal. Dec. (Advance sheets) p. 408 (decided September 21, 1923), the Supreme Court of California again upheld the validity of section 67 of the Public Utilities Act, quoting in italics that portion of the statute, which provides that:

"The findings and conclusions of the Commission on questions of fact shall be final and shall not be subject to review."

In this case the California court supported its construction of section 67 of the Public Utilities Act by a reference to the decision of this honorable court and a quotation therefrom in the case of *Penn. R. R. Co. v. International Coal Mining Co.,* 230 U. S. 184, as follows:

" 'Under the statute there are many acts of the carrier which are lawful or unlawful according as

> they are reasonable or unreasonable, just or unjust. The determination of such issues involves a comparison of rates with service, and calls for an exercise of the discretion of the administrative and rate-regulating body. For the reasonableness of rates, and the permissible discrimination based upon difference in conditions are not matters of law. So far as the determination depends upon facts, no jurisdiction to pass upon the administrative questions involved has been conferred upon the courts. That power has been vested in a single body, so as to secure uniformity and to prevent the varying and sometimes conflicting results that would flow from the different views of the same facts that might be taken by different tribunals.'"

It thus appears that section 67 and the decisions of the California Supreme Court construing it are consistent with the principles enunciated by this honorable court in the case of *New York & Queens Gas Co. v. McCall*, 245 U. S. 345, 347, 351,

> "The court of appeals of New York decided that the Public Service Commission was created to perform the important function of supervising and regulating the business of public service corporations; that the state law assumes that the experience of the members of the Commission especially fits them for dealing with the problems presented by the duties and activities of such corporations; that the courts, in reviewing the action of the Commission, have no authority to substitute their judgment as to what is reasonable in a given case for that of the Commission, but are limited to determining whether the action complained of was capricious or arbitrary and for this reason unlawful; and that it was clearly within the power of the Commission to make the order which is here assailed.

"This interpretation of the statutes of New York is conclusive, and the definition, thus announced, of the power of the courts of that state to review the decision of the Public Service Commission, based as it is in part on the decision in Interstate Commerce Commission v. Illinois C. R. Co., 215 U. S. 452, 470, 54 L. ed. 280, 287, 30 Sup. Ct. Rep. 155, differs but slightly, if at all, from the definition by this court of its own power to review the decisions of similar administrative bodies, arrived at in many cases in which such decisions have been under examination. Typical cases are: Baltimore & O. R. Co. v. United States, 215 U. S. 481-494, 54 L. ed. 292-297, 30 Sup. Ct. Rep. 164; Kansas City Southern R. Co. v. United States, 231 U. S. 423, 443, 444, 58 L. ed. 296, 304, 305, 52 L. R. A. (N. S.) 1, 34 Sup. Ct. Rep. 125; Railroad Commission v. Cumberland Teleph. & Teleg. Co., 212 U. S. 414, 420, 422, 53 L. ed. 577, 580, 581, 29 Sup. Ct. Rep. 357; Interstate Commerce Commission v. Union P. R. Co., 222 U. S. 541-547, 56 L. ed. 308-311, 32 Sup. Ct. Rep. 108; and Cedar Rapids Gaslight Co. v. Cedar Rapids, 223 U. S. 655, 668, 56 L. ed. 594, 604, 32 Sup. Ct. Rep. 389.

"It is the result of these and similar decisions, that while in such cases as we have here this Court is confined to the Federal question involved, and therefore has not the authority to substitute its judgment for that of an administrative commission as to the wisdom or policy of an order complained of, and will not analyze or balance the evidence which was before the Commission for the purpose of determining whether it preponderates for or against the conclusion arrived at, yet it will, nevertheless, enter upon such an examination of the record as may be necessary to determine whether the Federal constitutional right claimed has been denied; as, in this case, whether there was such a want of hearing or such arbitrary or capricious

actions on the part of the Commission as to violate the due process clause of the Constitution.

"* * * and we agree with the court of appeals of New York in concluding that the action of the Commission complained of was not arbitrary or capricious, but was based on very substantial evidence, and therefore that, even if the courts differed with the Commission as to the expediency or wisdom of the order, they are without authority to substitute for its judgment their views of what may be reasonable or wise."

However, notwithstanding section 67 of the Public Utilities Act and its own prior decisions, the California court in the particular cases under review failed to follow the undoubted principle of law above set forth. The state court while basing its decision primarily on the question of Federal jurisdiction above discussed, did, however, refer briefly to the Commission's findings in the following language:

"The respondents also urge the contention that since this court has decided in the case of Civic Center Association v. Railroad Commission, *supra*, that the Railroad Commission of California had jurisdiction to make and enforce orders providing for the elimination of those certain grade crossings involved, in part, in the proceedings before the Railroad Commission; and since the said commission had found and held in said proceedings that the establishment of a union terminal depot was an indispensable element in accomplishing the elimination of said grade crossings, the commission had the power to include in its order for the elimination of such grade crossings, the creation of such union terminal depot. There is no merit in this contention, for the reason, very aptly set forth in the extract above quoted from the decision of the New York Court of Appeals in the case of

> People etc. v. Public Service Commission, *supra*. It is also without merit for the further reason that notwithstanding the views expressed by the Railroad Commission in its findings and conclusions in the proceeding herein presented for review, we can perceive no indispensable relation between the elimination of grade crossings and the establishment of union depot facilities, nor can we see any insurmountable difficulty why jurisdiction over the matter of eliminating grade crossings may not be exercised in a proper case consistently, and it may be concurrently, with the exercise of the authority which is vested by the Act of Congress of 1920 in the Interstate Commerce Commission over the subject of union terminal depot facilities."

Thus, the state court has apparently rendered a decision contrary to those previously rendered and contrary to the principle followed by this honorable court. In this respect, we respectfully submit, the Supreme Court of California has erred.

3. Has the Commission under the police power of the state authority to order the railroads to erect a union depot as an essential measure for the elimination of dangerous grade crossings?

The Commission found, as above set forth, that a union depot was an essential measure for the elimination of grade crossings.

The primary object of the present proceeding is the protection of the people from the hazardous railroad grade crossings now existing in Los Angeles. This can only be accomplished by virtue of the police power of the state. That power has not been, and without a constitutional amendment *cannot be taken away* by any

legislation which Congress could enact. It is inviolably reserved to the states.

Gibbons v. Ogden, 9 Wheat. 1, 203; 6 L. ed. 23, 72;
United States v. DeWitt, 9 Wall. 41; 19 L. ed. 593;
Slaughter House cases, 16 Wall. 36, 62; 21 L. ed. 394, 404;
Patterson v. Kentucky, 97 U. S. 501-503; 24 L. ed. 1115, 1116;
Hamilton v. Kentucky Distilleries & W. Co., 251 U. S. 146, 156;
Cooley Const. Lim., 574;
Hammer v. Dogenhart, 247 U. S. 251.

It is true that Congress has enacted laws requiring safety appliances, headlights, etc., on all trains used in interstate commerce. The purpose of these laws is primarily to protect travelers and employees *on trains*. They are enacted under the power to regulate commerce. But the power to *regulate commerce* has nothing to do with the power to protect the citizen who uses the street crossing but who may never ride on a train. The latter power can only be exercised by the state.

If it should be said that the power of the state to protect the public using the streets conflicts with the operations of interstate carriers which also used the streets, then it must be answered that as to such conflict *the power of the state is supreme*. This was the holding of the United States Supreme Court in the recent case of *Erie Railroad v. Board of Public Utility Commissioners*, 254 U. S. 394; 65 L. ed. 322. In that case the court said, relative to an order of a state

commission requiring a carrier engaged in interstate commerce to abolish grade crossings:

"But it is argued that the order is unreasonable in the circumstances to which we have adverted, the principle applied to the regulation of public service corporations being invoked. Mississippi R. Commission v. Mobile & O. R. Co., 244 U. S. 388, 391, 61 L. ed. 1216, 1219, 37 Sup. Ct. Rep. 602; Chicago, B. & Q. R. Co. v. Railroad Commission, 237 U. S. 220, 59 L. ed. 926, P. U. R. 1915 C, 309, 35 Sup. Ct. Rep. 560. But the extent of the states' power varies in different cases from absolute to qualified, somewhat as the privilege in respect of inflicting pecuniary damage varies. The power of the state over grade crossings derives little light from cases on the power to regulate trains.

"Grade crossings call for a necessary adjustment of two conflicting interests,—that of the public using the streets, and that of the railroads and the public using them. Generically the streets represent the more important interest of the two. There can be no doubt that they did when these railroads were laid out, or that the advent of automobiles has given them an additional claim to consideration. They always are the necessity of the whole public, which the railroads, vital as they are, hardly can be called to the same extent. Being places to which the public is invited, and that it necessarily frequents, the state, in the care of which this interest is, and from which, ultimately, the railroads derive their right to occupy the land, has a constitutional right to insist that they shall not be made dangerous to the public, whatever may be the cost to the parties introducing the danger. That is one of the most obvious cases of the police power: * * * neither prospective bankruptcy nor engagement in interstate commerce can take away this fundamental right of the sovereign of the

soil. Denver & R. G. R. Co. v. Denver, 250 U. S. 241, 246, 63 L. ed. 958, 962, 39 Sup. Ct. Rep. 450."

Upon this authority we think that jurisdiction of the California Commission to require the complete elimination by interstate carriers, of grade crossings in the City of Los Angeles is unassailable, even though, as the Commission found, it is necessary to require the carriers to erect a union station in order to accomplish such elimination.

4. Does the Commission's order, in requiring the construction and use of the new union depot and the abandonment of the present facilities deprive railroads of property in violation of the guarantees under the Federal Constitution?

It was urged by respondents that the order requires the carriers to abandon large areas of land and to "destroy and scrap" adequate facilities of great value without making any provision for reimbursing them for the loss.

The evidence shows and the Commission found that the depots of the Salt Lake and Santa Fe were inadequate as facilities for passenger service and that the Southern Pacific depot was inadequate in that it failed to conform to any reasonable plan for the elimination of grade crossings. The evidence also shows that the Southern Pacific station, though of modern type, is located on a narrow site with restricted approach tracks making it really inadequate as a passenger facility. Finally there is the ultimate finding of the Commission that public necessity requires a *union depot*.

An order requiring the construction of a union depot necessarily carries with it the requirement that existing facilities be abandoned. If there is any public necessity for the union station then the abandonment of existing facilities is justified and there is no unconstitutional taking. Nearly every union depot case found in the reports has involved the abandonment of existing facilities, sometimes adequate and sometimes inadequate.

In the case of *Railroad Commission v. No. Ala. Ry.*, 62 So. 749-752, the railroads made the same objection, i. e. that requiring them to abandon existing facilities would be a taking of private property for public use without compensation.

The Supreme Court of Alabama said:

> "So long as the Commission acts within the rule above stated (referring to a matter not here involved), its orders in exercising the police power of the state is not violative of the state or federal constitutions as to condemning property without due process notwithstanding the railroad may lose the use of the old building or the use of the lot as a location for its passenger depot. It acquired the lot and erected the building with a full knowledge of and subject to the police power of the state."

In the case of *Railroad Commission v. Ala. Gt. So. Ry.*, 64 So. 13, a similar contention was made. We quote:

> "It is also contended by the railroad companies that the order of the Railroad Commission is void in that the order of the Railroad Commission requires each railroad company to abandon presently

> occupied depot facilities in the City of Bessemer, and to build, in conjunction with others, a union depot, whereas, the act authorizing the Railroad Commission to require the construction of a union depot does not authorize the Commission to compel the abandonment of depot and depot facilities, already erected and in use."

The order was nevertheless upheld as being "out of respect to public needs" and therefore "violative of no principle of constitutional law" (p. 16). And also on the ground that, "If the state has the power to which we have referred (the authority to require all railroad companies operating railroads within a city to use a union passenger station at that point), then it has the corresponding power to put that power into exercise" (p. 18). The "corresponding power" referred to includes the power to require the abandonment of existing depots.

The Supreme Court of Texas in *State v. St. L. & So. W. Ry.*, 165 S. W. 491-8, a union depot case, held as follows:

> "The statute explicitly grants the commission the power to require railroads to erect union depots, and this carries with it, by necessary implication, every power necessary to the accomplishment of such object."

To the same effect is the case of

Dewey v. At. Coast Line Ry., 55 S. E. 292; 142 N. C. 392.

In the case of *Gulf O. & S. F. Ry. Co.' v. State*, 167 S. W. 192, a union depot case, the findings were that one of the railroads,

> "owns and operates a depot * * * which depot is old and inadequate for the reasonable needs of said place; said *depot is situated so as to be reasonably convenient and accessible* to the citizens having occasion to use the same"

and that the other railroad depot

> "is reasonably convenient and accessible to the people of Celeste."

It was also found that a

> "union depot, if constructed at the junction of the two roads, would be reasonably convenient and accessible to the people of Celeste."

Under these findings the Supreme Court of Texas upheld the order requiring the erection of the union depot and the abandonment of existing depots *one of which was adequate.*

To the same effect see *Mayor etc. of Worcester v. Norwich etc. Ry.*, 109 Mass. 103.

Respondents may urge that the present Southern Pacific depot was built under an express order of the Railroad Commission. The decision of the Commission in 3 C. R. C. 927, shows that the Southern Pacific *applied for permission* to build this depot and this permission was granted upon the express condition that "the approval of the Commission therefor, shall never be used as a defense against the separation of grade crossings in the State of California." When the Southern Pacific built this depot it knew, or must be presumed to have known, that it might be required to participate in the building of a union station at any time. The evidence shows that at least since 1911

there has been agitation in Los Angeles for a union depot at the site ordered by the Commission.

5. Does the Commission's requirement that the operation of trains on Alameda Street be eliminated after the construction of the union depot impair the obligation of a contract contained in a certain franchise permitting the railroads to operate trains on Alameda Street?

The record fails to disclose the exact terms of any franchise claimed by the Southern Pacific Company for the occupancy of Alameda Street. No such franchise was introduced in evidence. The report of Commission's engineering department (Commission's Exhibit 1) does however set forth what purports to be such a franchise and we may assume, as was done in the case of *Denver & Rio Grande v. Denver*, 250 U. S. 242, that the railroad is the holder of such franchise as the City of Los Angeles was authorized to grant.

It is not claimed and no claim could be made that a franchise was ever granted directly to the Southern Pacific by a special act of the legislature.

Railroad corporations obtain their franchises to exist as corporations directly from the state under the general provisions of the Civil Code of California applicable to all corporations. (Civil Code, sections 283-299.) Of these sections, sections 291-295 inclusive pertain to the incorporation of railroads. The entire subject of the corporate franchises of railroad corporations is embraced within the aforementioned sections. The franchise or authority to construct railroads upon streets and highways within the State of California is specifically granted to railroad corpora-

tions by Civil Code section 465, subdivision 5, which provides as follows:

> "Section 465. * * * Every railroad corporation has power:
>
> 5. To construct their roads across, along or upon any stream of water, watercourse, roadstead, bay, navigable stream, street, avenue or highway, or across any railway, canal, ditch or flume which the route of its road intersects, crosses or runs along, in such manner as to afford security for life and property; but the corporation shall restore the stream or watercourse, road, street, avenue, highway, railroad, canal, ditch, or flume thus intersected to its former state of usefulness as near as may be, or so that the railroad shall not unnecessarily impair its usefulness or injure its franchise."

Any franchise to use the streets of the City of Los Angeles held by the Southern Pacific Company must have been acquired by virtue of this code section. But in addition to this franchise from the state, the Civil Code, section 470, requires that a railroad must obtain the consent of the governing body of an incorporated city before it can use or occupy any street therein. Section 470, Civil Code, reads as follows:

> "Section 470. No railroad corporation must use any street, alley, or highway, or any of the land or water, within any incorporated city or town, unless the right to so use the same is granted by a two-third vote of the town or city authority from which the right must emanate."

It has been held by the Supreme Court of California that a railroad can acquire no greater rights in the streets of the City of Los Angeles than the city has the

power to grant under the specific provisions of subdivision 5, section 465, Civil Code, as modified by section 470, Civil Code. In the case of *Los Angeles v. Southern Pacific Railroad Co.*, 157 Cal. 363-8, referring to these two code sections, the court said:

> "Section 470 of the Civil Code * * * is simply a limitation upon such authorization, (referring to subd. 5, sec. 465) making such a grant by the town or city authority a condition precedent to the exercise of the power given by the legislature so far as streets in incorporated cities or towns are concerned."

To the same effect, see *Simons Brick Co. v. City of Los Angeles*, 182 Cal. 230-5.

A distinction may here be drawn between a franchise in the true sense and a mere permit to occupy a particular street. Having built its railroads and engaged in the business of a common carrier of persons and property the Southern Pacific Company became the recipient of such franchise rights as the state granted under the statutes above referred to. But the determination by the City of Los Angeles of the particular streets which the railroad thus enfranchised by the state should occupy, involved no additional grant of franchise, in the true sense of the word. The only jurisdiction exercised by the city was the local police power of determining how its streets should be used by the common carrier, consistently with public covenience and safety. This distinction between a franchise in the true sense and the mere permit for the occupancy of city streets was recognized in the Su-

preme Court of California in the case of *Oro Electric Corp. v. Railroad Commission,* 169 Cal. 466-476, where it was held that the City of Stockton had no power to grant franchises to carry on the business of selling electricity to the inhabitants, but did have

> "at most, the limited power above mentioned, i. e. nothing more than the power to grant to electric corporations, the right to use its streets".

We think the same situation exists here. The Southern Pacific acquired its franchise to carry on its business as a common carrier and to operate on all highways both within and without cities, directly from the state. It can have nothing more than a permit to use the city streets of the City of Los Angeles. Such a permit is granted under the police power and the same power may modify it for the protection of the people from danger. Such change does not impair or affect the company's *franchise* to operate into Los Angeles. It simply requires it to operate into Los Angeles in a safe manner. Such a permit to use the streets is subject to the police power and must be exercised under the conditions set forth in sec. 465, sub. 5, of the California Civil Code. It is there provided that railroad corporations may construct their roads along or upon any street or highway "*in such manner as to afford security for life and property*". We submit that this is an essential and continuing condition which the railroad company must fulfil if it is to maintain its right to the use of the street. The Commission found and the Southern Pacific Company has admitted that

its road is not so constructed along Alameda Street as to afford security for life and property.

We respectfully submit that the right to the use of Alameda Street claimed by the Southern Pacific is a strictly limited one, as described by the above statute, and that it is not in the true sense a franchise. It is a permit, which, though not revocable at will, is necessarily subject to modification or even complete revocation whenever the necessities of the public require it. The city could not alienate its police power to protect its citizens from dangerous conditions arising in a public street.

We think the case of *Denver & Rio Grande R. Co. v. Denver*, 250 U. S. 242; 63 L. ed. 961, is squarely in point on this proposition and goes much further than it is necessary to go in the present case.

In that case an ordinance was enacted directing the *removal* of a railroad track from the intersection of two streets in Denver. In the present case the tracks have not been ordered to be removed, but are to be retained for freight switching.

Answering objections similar to those made in this case, this court there said:

> "The track in Wynkoop street has been there since 1871, and we shall assume, as did the supreme court of the state, that it was put there in virtue of some ordinance of that period, and that the ordinance became a contract and the right granted became a vested property right. But, as this court often has held, such contracts and rights are held subject to the fair exercise by the state,

or the municipality as its agent, of the power to adopt and enforce such regulations as are reasonably necessary to secure the public safety; for this power 'is inalienable even by express grant', and its legitimate exertion contravenes neither the contract clause of the Constitution nor the due process clause of the 14th Amendment. Atlantic Coast Line R. Co. v. Goldsboro, 232 U. S. 548, 558, 58 L. ed. 721, 726, 34 Sup. Ct. Rep. 364; Chicago and A. R. Co. v. Tranbarger, 238 U. S. 67, 76, 59 L. ed. 1204, 1210, 35 Sup. Ct. Rep. 678. * * *"

"The scope of the power and instances of its application are shown in the decisions sustaining regulations (a) requiring railroad companies at their own expense to abrogate grade crossings by elevating or depressing their tracks and putting in bridges or viaducts at public crossings (Northern P. R. Co. v. Duluth, 208 U. S. 583, 52 L. ed. 630, 28 Sup. Ct. Rep. 341; Chicago, M. & St. P. R. Co. v. Minneapolis, 232 U. S. 430, 58 L. ed. 671, 34 Sup. Ct. Rep. 400; Missouri P. R. Co. v. Omaha, 235 U. S. 121, 59 L. ed. 157, 35 Sup. Ct. Rep. 82), (b) requiring a railroad company at its own cost to change the location of a track and also to elevate it as a means of making travel on a highway safe. (New York and N. E. R. Co. v. Bristol, 151 U. S. 556, 38 L. ed. 269, 14 Sup. Ct. Rep. 437), (c) prohibiting a railroad company from laying more than a single track, in a narrow, busy street, although its franchise authorized it to lay a double track there (Baltimore v. Baltimore Trust & G. Co., 166 U. S. 673, 41 L. ed. 1160, 17 Sup. Ct. Rep. 696), and (d) requiring a gas company whose mains and pipes were laid beneath the surface of a street under an existing franchise to shift them to another location at its own cost to make room for a public drainage system (New Orleans Gaslight Co. v. Drainage Commission, 197 U. S. 453, 49 L. ed. 831, 25 Sup. Ct. Rep. 471)."

The court after discussing the reasonableness of the order holds:

> "The situation is unusual and the ordinance deals with it in a rather practical way. Giving effect to all that appears, we are unable to say that what is required is plainly unreasonable and arbitrary."

The limitation on the power of the city to alienate or restrict the exercise of the state's sovereign power of regulation is fully defined in *Home Telephone and Telegraph Co. v. City of Los Angeles*, 211 U. S. 265; 53 L. ed. 176.

6. Is the Commission's order invalid because it may require the railroads to expend large sums of money and to exercise the power of eminent domain in acquiring the necessary land and constructing a union depot?

It was urged by respondents that the order of the Commission invaded their rights under the Federal Constitution because the effect of the order was to require them to expend large sums of money and to acquire new property. It is true that the Commission's order directed respondents to procure grounds for a union depot within a specified area. To acquire the necessary property, construct a union depot and to eliminate the grade crossings as ordered will, of course, require the expenditure of considerable money. That a public utility may be required to expend money for such purposes and, if necessary, to exercise the power of eminent domain in order to perform its public utility

functions has been held, however, in the following cases:

Erie Railroad v. Board of Public Utility Commissioners, Adv. Ops. Feb. 1, 1921, No. 6, pp. 199-201;

Wisconsin M. & P. R. Co. v. Jacobson, 179 U. S. 287; 45 L. ed. 194-201, quoted with approval in *Pac. T. & T. Co. v. Eshleman*, 166 Cal. 672;

Mulke v. N. Y. & Harlem R. Co., 197 U. S. 544; 49 L. ed. 872;

Atlantic Coast Line R. Co. v. N. Carolina Corp. Com., 206 U. S. 1; 51 L. ed. 933, 945;

Mobile etc. Ry. Co. v. Mississippi, 210 U. S. 187; 52 L. ed. 1016-1024;

Grand Trunk R. Co. v. Michigan R. R. Com., 231 U. S. 470; 58 L. ed. 318;

Ala. Great So. Ry. v. R. R. Com. of Ala., 64 So. 13; 185 Ala. 354;

Lukraucka v. Spring Valley W. Co., 169 Cal. 318-333.

It was claimed that the order here under review requires the expenditure of an excessively large sum of money. Not having filed plans as directed by the Commission, it is impossible for respondents or anyone else to say what it will cost to comply with the Commission's order. That the present conditions in Los Angeles justify very extensive and costly changes is, however, clearly indicated both by the estimates of engineer witnesses and by the application filed by the Southern Pacific and Salt Lake companies in which

they sought in another way, whether less costly or not cannot yet be determined, to accomplish some of the changes and improvements directed by the Commission's order.

We respectfully submit that the decision of the Supreme Court of California here under review should be reversed.

Dated, San Francisco,
October 13, 1923.

Respectfully submitted,

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In the Supreme Court

OF THE

United States

October Term, 1923

No. 284

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,
Petitioner,

vs.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, (a Corporation),
Respondent.

Certiorari to the Supreme Court of the State of California

BRIEF FOR RESPONDENT, ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY.

STATEMENT OF THE CASE

Writs of certiorari have been granted upon the petition of the Railroad Commission of the State of California, directed to the Supreme Court of that State, to review a decision rendered by the Supreme Court of the State of California, wherein the state court annulled orders entered by the Rail-

road Commission of the State of California requiring the Atchison, Topeka & Santa Fe Railway Company, Los Angeles & Salt Lake Railroad Company, Southern Pacific Company, and Southern Pacific Railroad Company to "make and construct * * * additions, *extensions*,* improvements to, and changes in, their railroad facilities in the City of Los Angeles, and to erect a union passenger station and buildings incidental thereto in said City of Los Angeles" at a designated site remote from the existing passenger stations of respondents; "and perform such work and make and construct the necessary fills, cuts, viaducts and other works and structures necessary for a separation of grades at" certain specified crossings. (Original Order, Tr. 104, 105).

The Commission's orders further provided that Southern Pacific Company should "eliminate all main line traffic from Alameda Street" for a distance of about three miles, over which thirty-nine trains carrying interstate passengers are operated each twenty-four hours.

The Commission's orders will require the Atchison, Topeka & Santa Fe Railway Company, the Los Angeles & Salt Lake Railroad Company, Southern Pacific Company, and Southern Pacific Railroad Company, to *abandon* their existing passenger

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* (Italics are ours unless otherwise noted.)

(We will refer to petitioner's brief filed in support of the petition for writ as "Brief for Petitioner" and to the second brief filed as "Supplemental Brief.")

station facilities in the City of Los Angeles, including the modern passenger station of the Southern Pacific Company, erected in 1915 under plans and specifications approved by the California Railroad Commission by formal order, although the uncontradicted evidence shows that the existing passenger terminal facilities of the Southern Pacific Company are adequate to accommodate all passenger traffic of the three steam lines for at least a period of twenty years and that properties owned by the Santa Fe "offer a suitable location for a union passenger terminal" and the Los Angeles & Salt Lake Railroad Company owns ample property to provide all necessary facilities in handling their passenger traffic.

As is stated by counsel for petitioners in their petition for writ of certiorari, "the relief asked by the various complaints (before the Commission) *included a general investigation of the whole railroad and terminal situation*" (pp. 3, 4).

The orders require the carriers to "proceed to the procurement of sufficient ground within the boundaries hereinafter set out, and proceed with the construction of an adequate union passenger station thereon and buildings incidental thereto in the City of Los Angeles, and to make such *additions to, extensions of,* improvements and changes in the existing railroad facilities of said companies as may be reasonable, necessary and incidental to the use of said union passenger station." (Tr. 146.)

It is conceded by counsel for petitioners in their brief (pp. 17 and 18) that in order to carry the Commission's orders into effect the carriers would be obliged to make *extensions of their main lines* to reach the proposed site of the union depot or to effect some arrangement for the *joint use of tracks* and that "the erection of a new union depot and the elimination of grade crossings will require a rearrangement of traffic. Some new track may have to be laid and some old track abandoned." (Petitioner's Brief p. 21.)

To carry the Commission's orders into effect the carriers would be required to expend a sum estimated as low as $25,396,633 and as high as $45,092,104. (Tr. 94.)

REVIEW BY STATE SUPREME COURT

The Commission's orders becoming final, each of the carriers thereupon filed in the Supreme Court of the State of California a petition for writ of review in conformity with the provisions of Section 67 of the Public Utilities Act of the State of California (Tr. 169, 185, 190), alleging that the lines of railroad owned and operated by it formed a component, integral and essential part of an interstate system of steam railroads and are operated as a unit as an interstate system for the transportation of freight and passengers in interstate and intrastate commerce, and drawing in question the validity of the California statute upon

which the Railroad Commission had predicated their orders and the authority exercised under these statutes upon the ground that the state statute and the authority sought to be exercised was repugnant to the Constitution and laws of the United States.

The grounds upon which these petitions were rested, briefly stated, are:

That the decisions and orders of the Railroad Commission of the State of California are beyond the power and jurisdiction of that Commission and are in contravention of and repugnant to Section 8 of Article I of the Constitution of the United States; and of Subdivision 15 of Section 1 of the Act of the Congress of the United States generally known as the Interstate Commerce Act, approved February 4, 1887, as amended; and of Subdivisions 18 to 22, inclusive, of the same section; and of Subdivision 4 of Section 3 of said Act as amended; and of Subdivision 4 of Section 5 of said act as amended; and of Subdivisions 2 and 3 of Section 15-A of said Act, as amended, which section was added to said Act by the Transportation Act of 1920; and of Subdivision 2 of Section 20-A of said Interstate Commerce Act, as amended, and particularly as amended by said Transportation Act.

That the Railroad Commission of the State of California has no jurisdiction to require the respondents to comply with said orders for the

reason that the necessary force and effect of such orders is to require the joint use of terminal facilities owned by the several carriers which are used by them in the conduct of their business by one or more of the other carriers, and to require the joint use of main track or tracks of each of the carriers for a distance outside of its terminal, both by the owner and one or more of the other carriers, whereas at the time the Commission's orders and decisions were rendered power and authority to require the use of terminal facilities, including main line track or tracks for a reasonable distance outside the terminals, by any other carrier or carriers, was vested solely in the Interstate Commerce Commission by the provisions of Paragraph 4 of Section 3, and Paragraph 15 of Section 1 of the Interstate Commerce Act, as amended in 1920.

That the California Railroad Commission has no jurisdiction to require the Respondents to comply with the provisions of the orders for the reason that the necessary force and effect of the orders so entered is to require each of the carriers to undertake the abandonment and extension of its lines of railroad and the construction of a new line of railroad and facilities, and the operation thereof under said extensions, and the joint use of such extensions and new line by each of the carriers and the other carriers involved in the order, whereas at the time said decisions and orders were entered no such extension

of lines or construction of new line could be undertaken by the carriers until there had been obtained from the Interstate Commerce Commission a certificate under the provisions of paragraphs 18 to 22, inclusive, of Section 1 of the Interstate Commerce Act, as amended, permitting the carriers to make such extension, and that the orders of the California Commission, therefore, invade the authority and jurisdiction of the Interstate Commerce Commission and are in contravention of and repugnant to Section 8 of Article I of the Constitution of the United States.

That the Railroad Commission of the State of California had no jurisdiction or power to make or enter its orders because, in order to comply therewith, the carriers are required to make expenditures of great and unreasonable sums out of proportion to any benefits to be derived therefrom by the carriers or their passengers, or the public generally, and the necessary effect of the orders will be to require each of the carriers to expend sums which could only be obtained by the issuance of securities under the authority and supervision of the Interstate Commerce Commission as provided by Section 20-A of the Interstate Commerce Act, and that, therefore, the power sought to be exercised by the State Commission is in contravention of the Interstate Commerce Act and Section 8 of Article I of the Constitution of the United States.

That the Commission's decisions and orders are in contravention of and repugnant to the provisions of Section 1 of the Fourteenth Amendment of the Constitution of the United States for the reason that the necessary effect of said orders is to require the railroads to share the use of the passenger terminal facilities owned and operated by them respectively in the City of Los Angeles, together with their main track or tracks for a reasonable distance beyond their terminals, with the other carriers named in the decisions and orders, without compensation for the damages which the railroads will necessarily sustain.

That the Commission's decisions and orders were in contravention of and repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States by reason of the fact that respondents were by said decisions and orders denied the equal protection of the laws and deprived of their property without due process of law for the reason that no evidence was introduced before said Commission to the effect that the passenger terminal facilities owned and operated by carriers respectively in the City of Los Angeles are inadequate to meet the public convenience and necessity.

That the Commission's decisions and orders are repugnant to the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States by reason of the fact that the uncontradicted evidence introduced before said Com-

mission shows that the present facilities and passenger station of Southern Pacific Company and Southern Pacific Railroad Company are adequate to accommodate all passenger traffic of respondents within said City of Los Angeles and in addition thereto to accommodate all the passenger traffic of the other steam line carriers named in said decisions and orders, not only at the present time, but for at least a period of twenty years from the present time, and, therefore, public convenience, necessity and safety do not require these companies to abandon the passenger facilities owned and operated by them, and join the other carriers named in said decisions and orders in the expense of constructing a union passenger station and buildings incidental thereto at the site specified by said Commission in its said decisions and orders.

The Southern Pacific Company and Southern Pacific Railroad Company also contended that the Commission's decisions and orders are in contravention of and repugnant to the provisions of Section 10 of Article I of the Constitution of the United States and of the Fourteenth Amendment to the Constitution of the United States by reason of the fact that these decisions and orders will, if made effective, impair the contract made between the State of California and Southern Pacific Railroad Company, and the contract made and entered into between the City of Los Angeles and petitioner Southern Pacific Railroad Company,

granting a franchise authorizing the construction and operation of its railroad on and along Alameda Street in the City of Los Angeles.

DECISION OF THE SUPREME COURT OF THE STATE OF CALIFORNIA

The state court by unanimous opinion sustained the constitutional rights asserted by the carriers and decided in their favor upon the sole ground that the state statute was repugnant to the Federal statute, and concluded "that full power and authority over the matter of union terminal depot facilities of the railroads who are largely engaged in interstate commerce, and who are the petitioners herein, has been vested in the Interstate Commerce Commission under the terms of said amendatory act of 1920, and that by virtue thereof the Railroad Commission of California, one of the respondents herein, has been divested of the power, authority and jurisdiction over that subject, sought by it to be exercised in the several proceedings before it and by the order presented for review herein." (Tr. 233.)

The state court further held that the question decided by it made it unnecessary to decide the other questions raised by the carriers in their petitions for writ of review, all of which were separable and related to the denial of rights in violation of the Federal Constitution.

The three petitions for writs of certiorari filed in this court relate solely to the question of the respective jurisdiction of the Federal and State Commissions. (Petitions, pp. 8, 9.)

Consolidation of Cases

In view of the fact that the several proceedings before the Railroad Commission, including the application made by the carriers and the order for a general investigation, were consolidated by an order of the Commission and treated as one proceeding, and, as was stated by counsel for petitioners, "the three proceedings (instituted in the state court) raised almost identical questions and could be treated by the State Supreme Court as one case" and for the purpose of economizing time and effort the respondents in the three cases pending before this court will file in each case an identical brief.

ARGUMENT.

SCOPE OF REVIEW BY THIS COURT

Counsel for petitioner have set forth in their brief at page 5 that it has been deemed proper to submit a supplemental stipulated record containing such transcript of evidence as is necessary to enable this court to determine all the points raised by respondents in their petitions for writs of review addressed to the state court. Counsel for all parties have joined in stipulating the supplemental transcript and exhibits into the record filed in this court in order that this court may determine all points raised in the Supreme Court of the state in the event this court concludes to decide these questions.

Counsel for respondents will later undertake to reply to the arguments relating to these other points which have been argued by counsel for petitioner in their brief, but nevertheless we hold it our duty to respectfully suggest the reasons why this court in these proceedings should not undertake to review any question other than that decided by the state court.

We were at first inclined to accept the conclusions which counsel for petitioner reached by relying upon the cases cited at page 5 of their brief but examination of these cases discloses that in the first three cases cited (*Southern Railway Company et al. v. Watts; Atlantic Coast Line R. R. v. Daughton; Greene v. L. & I. R. Co.*) the Supreme

Court of the United States was reviewing decisions rendered by inferior Federal courts and that the last case cited by petitioner's counsel *(Appleby v. Buffalo)* is not apposite as the case is authority only for the rule that "the right of this court to review the judgment of the highest court of the state is specifically limited by Section 709, Revised Statutes, and in cases such as this depends upon an alleged denial of a Federal right which the record shows was specifically set up and claimed in and denied by the state court, or that such was the necessary effect of the judgment."

A diligent examination of the authorities has failed to disclose any case similar to the case at bar. In practically all cases where this question has been raised it appears that there was a Federal question upon which the jurisdiction of this court was invoked and also questions relating to local or state law, whereas in the case at bar the respondents petitioned the state court for a writ of review of the Commission's orders upon several grounds, drawing in question the validity of the California statute and the authority exercised by that state through its Railroad Commission on the ground of their being repugnant to the Constitution and laws of the United States. (Paragraphs 9, 10, 11, 12, 13, 14, 15, petition for writ of review of Southern Pacific Company and Southern Pacific Railroad Company (Tr. 176-182);

paragraph 2, petition for writ of review of the Atchison, Topeka & Santa Fe Railway Company (Tr. 186); paragraph 3, petition of Los Angeles & Salt Lake Railroad Company (Tr. 192).)

The State Supreme Court rested its decision and judgment in each of respondents' petitions upon the relative and respective jurisdictions of the Interstate Commerce Commission and the Railroad Commission of the State of California (Tr. 233). The State Court further held that the disposition of the question decided rendered unnecessary a discussion of the other questions which had been raised by the respondents in the petitions filed in the State Court. (Tr. 233-4.)

The petitions for writs of certiorari filed in the instant cases are addressed entirely to a review of the one question decided by the State Supreme Court and the original brief filed in support of the petition for the writ of certiorari relates exclusively to this one question.

The question whether all the grounds relied upon by the respondents in their petitions for review filed in the State Court should be reviewed by this Court in this proceeding would be easy of solution in the event all other grounds urged upon the State Court for writs of review had related to local or state law for the reason that this question is set at rest by a long line of harmonious decisions ren-

dered by this Court under the Acts of 1789 and 1867 and Section 237 of the Judicial Code.

But the facts in these cases are peculiar in that all the grounds upon which the carriers relied in seeking writs of review from the State Court were, as is shown by the petitions for writs of review, of a Federal nature.

We have reached the conclusion that the authorities hereinafter cited sustain the rule that on a hearing of a writ of certiorari or a writ of error addressed to "the highest court of the state" under the provisions of Section 237 of the Judicial Code this Court, in considering the questions presented, will confine itself to a consideration only of such *Federal* questions as have been *decided* by the highest court of the State.

> *Murdock v. City of Memphis*, 20 Wall. 590 (87 U. S.).

See also *Railroad Co. v. Maryland*, 20 Wall. 643, 645.

The two cases last cited, as well as many cases hereinafter cited, were, it is true, made under the provisions of the Federal Judiciary Act which has been superseded by Section 237 of the Judicial Code, but they are nevertheless applicable in view of the similarity of the provisions of the statutes then and now in force.

"The jurisdiction of this court to review the proceedings of the state courts, as we have had frequent occasion to declare, is not that of a general reviewing court in error, but is limited to the specific instances of *denials* of Federal rights, whether those pertaining to the constitutionality of Federal or State statutes, or to certain rights, immunities and privileges of Federal origin, specially set up in the State Court and *denied* by the rulings and judgment of that court. * * *"

Waters-Pierce Oil Co. v. Texas, 212 U. S. 86, 97.

St. Louis, etc., v. Taylor, 210 U. S. 267.

Seaboard Air Line Ry. v. Duvall, 225 U. S. 477, 487.

Keokuk & Hamilton Bridge Co. v. Illinois, 175 U. S. 633-4.

Harding v. Illinois, 196 U. S. 78, 85-6

Eustis v. Bolles, 150 U. S. 361, 366.

In support of our contention that this Court will confine its attention only in its examination of the questions arising in connection with the writ of certiorari to the points or questions covered by the petitioner's assignment of errors as to which review is prayed, we direct the Court's attention to the case of *Alice State Bank v. Houston Passenger Company*, 247 U. S. 240, which was a case of certiorari to the Federal Circuit Court of Appeals. It was there held:

"Upon a review by certiorari, the court confines its discussion to the matter relied on in procuring the writ."

At page 242, when referring to a contention which might have been made for a reversal of the judgment, the Court said:

> "But as that is not the ground upon which the writ of certiorari was asked or granted, we confine our discussion to the matter relied upon in asking the intervention of this Court," citing *Hubbard v. Tod*, 171 U. S. 474, 494.

We can conceive of no reason why the rules announced in these cases are not equally applicable in a case where writs of error or certiorari have been directed to a State court.

It appears from the foregoing authorities that where this court has only determined the question decided by the State Court it has remanded the case to the State Court where reversal is ordered, with instructions to the State Court for further proceedings not inconsistent with the opinion of this court.

Kinzell v. C. M. & St. P. Ry. Co., 250 U. S. 130.

Coe v. Armour Fertilizer Works, 237 U. S. 413.

Upon cases being so remanded by this Court to the highest courts of the States, the State Courts will proceed to determine the questions which were not originally adjudicated by them.

Kinzell v. C. M. & St. P. Ry. Co., 190 Pac. 255.

Ettor v. City of Tacoma, 77 Wash. 267, 137 Pac. 120.

Gibson v. Chouteau, 50 Mo. 85.

Goodtitle v. Kibbe, 1 Ala. 403.

Simonson v. Monson, 36 S. D. 245, 153 N. W. 1020.

Harding v. Harding, 148 Cal. 397.

The authorities cited warrant the conclusion that any Federal questions raised in the State Supreme Court by the petitions for writ of review which were not considered and decided by the State Court are not open to consideration in these proceedings.

However, in view of our inability to find a case exactly in point, we will, after presenting an argument in support of the correctness of the State Court's decision, through caution present a brief argument in support of the other questions presented to the Supreme Court of the State of California and which were not decided by it, so that in the event this Court concludes that it is incumbent upon it to decide these questions the Court will be fully advised as to the respondents' contentions.

THE ORDERS OF THE STATE COMMISSION ARE VOID BECAUSE THEY CONFLICT WITH THE POWERS CONFERRED UPON THE INTERSTATE COMMERCE COMMISSION BY THE TRANSPORTATION ACT OF 1920.

The proceedings were begun before the California Commission and the Southern Pacific and Salt Lake lines applied to that Commission to consolidate their terminal facilities and the California Commission entered upon a general investigation of the entire terminal situation at Los Angeles upon its own motion long before the passage of the Transportation Act of 1920. After the passage of that act the respondents formally questioned the jurisdiction of the State Commission in the proceedings before that body.

In the petitions for writs of review filed in the Supreme Court of the State of California there was drawn in question the validity of the California statute and the authority sought to be exercised thereunder by the State Commission, upon the ground that by reason of these amendments to the Interstate Commerce Act the validity of the California statute and the authority sought to be exercised thereunder by the Commission were in contravention of and repugnant to the Act to Regulate Commerce and to Section 8 of Article I of the Constitution of the United States (Tr. 180, 181, 187, 188, 192,

193), and it was held by the highest court of the state "that full power and authority over the matter of union terminal depot facilities of the railroads who are largely engaged in interstate commerce, and who are the petitioners herein, has been vested in the Interstate Commerce Commission under the terms of said amendatory act of 1920, and that by virtue thereof the Railroad Commission of California, one of the respondents herein, has been divested of the power, authority and jurisdiction over that subject, sought by it to be exercised in the several proceedings before it and by the order presented for review herein." (Tr. 233.)

It therefore appears that the question of the exclusive jurisdiction and control of the subject matter of these controversies by the Federal Commission and resultant lack of jurisdiction of the State Commission to enter the orders set forth in the transcript has been considered of controlling importance.

Requirements, Scope and Effect of the Orders of the State Commission

This question necessarily can not be determined without first giving consideration to the express requirements and necessary effect of the Commission's decisions and orders. In entering its second order the California Commission held that as far as its original decision and order were

considered "pertinent and of value" that it was approved except as modified in the second decision and order, and therefore the orders must be read and considered together.

As is stated by counsel for petitioner in the brief in support of their petition for the writ:

> "The relief asked by the various complaints included a *general investigation of the whole railroad and terminal situation*, the separation or abolition of dangerous grade crossings, and the construction and use jointly by the three railroad companies of the union passenger depot." (Br. pp. 3, 4.)

It is contended by the petitioner's counsel at page 3 of their supplemental brief that the order requires the respondents to:

> Procure jointly grounds for a union depot within a specified area.
>
> File plans and specifications jointly for the construction of a union passenger depot.
>
> Construction of a depot in accordance with the plans.
>
> Eliminate certain grade crossings.

Respondents agree that the requirements of the order are as stated by counsel but that there are many other requirements of the orders which have not been specified by petitioner's counsel and which will hereafter be set forth.

Elimination of Grade Crossings

So far as grade elimination is concerned it may be here stated that there never has been any controversy between the complainants in the proceedings before the Commission and the carriers, or between the carriers and the Commission, as to the necessity of eliminating the grade crossings specified in the Commission's order.

It may be incidentally related that under the plan proposed by the Southern Pacific and Salt Lake lines, as fully set forth in the application made by these lines (Tr. p. 31) and the agreement attached to the application found in the appendix of the supplemental transcript, (p. 573) according to the uncontradicted evidence of the engineering experts of these lines, would entirely eliminate all grade crossings of the steam lines and in addition would eliminate 21,600 street crossing movements of the Pacific Electric suburban trains daily, which would not be eliminated under the orders entered by the Commission. Unqualified statements to similar effect were made by counsel representing the carriers from the beginning of the proceedings until they closed their final arguments.

THE CALIFORNIA COMMISSION'S ORDERS REQUIRE RESPONDENTS TO EXTEND, ABANDON PORTIONS OF MAIN LINES AND TERMINAL FACILITIES, AND CONSOLIDATE TERMINAL FACILITIES, AND MAKE JOINT USE THEREOF.

Respondents disagree, however, with counsel's statements as to what the orders do not require. It is contended that the orders do not require the construction or extension of any line of railroad. It is unnecessary to refer to the transcript to refute this statement because of the statements contained in the brief filed by petitioner in support of their petition for the writ. The map attached to Petitioner's brief does not, as is contended by counsel at page 17 of that brief, show that the Salt Lake and Santa Fe lines border the area designated by the Commission in which the carriers are required to construct a union terminal. The map shows that the Salt Lake line does not own or operate any track that "borders" or in any wise reaches any part of the specified area. The Salt Lake line would be obliged to either extend its line across the Los Angeles River to the site of the union depot or arrange with either the Southern Pacific or Santa Fe lines for the joint use of their trackage, or as a possible alternative extend its lines from the point marked "spur" on the southerly portion of the map to which reference has been made across the river and thence through the industrial section of Los Angeles to the "area fixed by the order."

By reason of the fact that the Southern Pacific Company is obliged to eliminate all its main line traffic from Alameda Street from Fifteenth Street on the south to College Street on the north, a distance of three miles, thereby completely severing its main line operations between these points, it will be obliged to provide a means of carrying its lines between Fifteenth and College Streets by the "extension" of new lines or by the "joint use of main line and terminal facilities" of one or both of the other steam lines. This is conceded by counsel for petitioner at pages 17 and 18 of their brief where it is stated:

> "It is obvious from an inspection of the map that this southerly traffic can reach the proposed depot site in at least three different ways; by a *new line* which the Southern Pacific might construct along the river bed reaching the depot in the same way that the southerly lines of the Salt Lake and Santa Fe reach it; by some arrangement with either the Salt Lake or Santa Fe for a *joint use of tracks* for southerly traffic; by an amendment to the commission's order permitting the southerly traffic to come into the depot upon the present tracks along Alameda Street."

The suggestion contained in this statement that there be a further amendment to the Commission's order, of course should be given no consideration because we are here concerned with orders that have been made and sought to be effected and not with possible amendments thereof.

That there must be "extensions" of existing lines is further shown by the statement found on page 21 of the petitioner's brief to which reference has been made.

> "True, the erection of a new union depot and the elimination of grade crossings will require a rearrangement of traffic. Some new track may have to be laid and some old track abandoned."

The express provisions of the Commission's orders show conclusively that the carriers are required to make extensions in their lines. The orders provide that the carriers "proceed to the procurement of sufficient grounds within the boundaries hereinafter set out, and proceed with the construction of an adequate union passenger station thereon and buildings incidental thereto in the City of Los Angeles, and to make such *additions to, extensions of*, improvements and changes in the existing railroad facilities of said companies as may be reasonable necessary and incidental to the use of said union passenger station." (Tr. 146.)

It is further argued that the orders do not require the "abandonment of any line of railroad." It is inconceivable that such contention should be made in view of paragraph 14 of the final order entered by the California Commission. (Tr. 150, 151.) The Southern Pacific Company is required by this provision of the order to abandon this three miles of its main line for all train operation

over which it operates 39 main line passenger trains carrying interstate passengers each day. (C. R. C. Exhibit No. 29.)

Counsel for petitioner seek to discount these controlling facts by arguing (Br. p. 23:)

> "Here, the carriers will not abandon or cease operating their roads or any part of them. They will merely shift their lines in such a way as to carry on the same operations they do now, but with more safety and convenience to the public."

But, nevertheless, the admission is made (Br. 21) that "some new track may have to be laid and some old track abandoned." But the geography of the territory involved in the Commission's orders, as shown on the map incorporated in petitioner's brief and the statements contained in their brief, lead to the inevitable conclusion that the Commission's orders expressly and also by their necessary effect require the carriers to make extensions of their lines, to abandon portions of their lines, and further contemplate the joint use of terminal facilities, main line and trackage by the other carriers. (See petitioner's brief pp. 17, 18, 21, 26).

It is impossible to escape the conviction that the findings and conclusions of the Commission require a comprehensive abandonment, extension, and consolidation of the terminal facilities of re-

spondents at the City of Los Angeles, the extent to which the orders go being further emphasized by the fact that the respondents will be required to expend a sum of $36,002,191 in fulfilling the requirements of the Commission's orders irrespective of the expense of eliminating grade crossings. (C. R. C. Exhibit No. 2. S. P.-S. L. Exhibit No. 27.)

THE NEW NATIONAL POLICY DECLARED BY THE AMENDMENTS OF 1920 TO THE INTERSTATE COMMERCE ACT.

Under the provisions of the amendments to the Act to Regulate Commerce, approved February 28, 1920, Chapter 91, 41 Stats. at L. 456, Congress enlarged the authority of the Interstate Commerce Commission and vested the Commission with power and authority to require carriers "subject to the jurisdiction of the Interstate Commerce Commission" to extend and consolidate their lines and terminal facilities thereby depriving state commissions of any similar jurisdiction that they might previously have exercised, and no carrier may abandon any portion of its line without express authority of the Interstate Commerce Commission.

In deciding the case of *Railroad Commission of Wisconsin, et al. vs. C. B. & Q. Ry. Co.*, 257 U. S. 563, this court, referring to the compre-

hensive amendments that had been made to the Interstate Commerce Act held that it was "manifest from this very condensed recital that the act made a new departure" and we may add not only as far as the regulation of rates is concerned but also with reference to the financial affairs and actual operations of the carriers.

This court has had frequent occasion to consider these amendments to the Interstate Commerce Act and it is therefore deemed unnecessary to do more than make brief reference to the amendments upon which respondents rely.

In construing the amended act in order to properly determine what jurisdiction has been confided to the Interstate Commerce Commission to the exclusion of the state commissions, it is necessary in accordance with the elementary rule of statutory construction to consider the act in its entirety.

It will then become apparent that Congress in the exercise of its constitutional power sought by these amendments to vest the Federal Commission with authority to regulate carriers "subject to the jurisdiction of the Interstate Commerce Commission" in a more comprehensive and complete manner than was contemplated prior to the amendments of 1920, and that it was the intention of Congress to occupy by Federal control the entire field as far as necessary to comprehensively

regulate the operation and financial affairs of interstate carriers in order to make certain that the transportation needs of the entire country would be most completely served and protected.

Congress Has Covered Every Detail of the Subject so Completely and in Such a Manner as to Manifest Its Purpose to Exercise Its Constitutional Authority and Therefore the Regulating Power of the States to Compel Extensions, Abandonments, Consolidations and Joint Use of Terminal Facilities Has Ceased to Exist and All State Regulations of These Matters Have Been Superseded.

Until these amendments to the Federal statute became effective the Interstate Commerce Commission had no power to regulate interstate carriers in these particulars but by the enactment of this amended law Congress undertook to adopt a "national policy" which contemplates the exercise of Federal power heretofore lying dormant, thereby automatically divesting the several state commissions of power to effect consolidation of terminals and other facilities or the abandonment or extension of the lines of carriers subject to the jurisdiction of the Federal Commission.

Erie R. R. Co. vs. N. Y., 233 U. S. 671, and cases cited.

Houston, East & West Texas Ry. Co., vs. U. S., 234 U. S. 342.

Adams Express Co. vs. Croninger, 226 U. S. 491.

Texas & Pacific Ry. Co. vs. Rigsby, 241 U. S. 33, 41-2.

Northern Pacific Ry. Co. vs. Washington, 222 U. S. 370, 378.

Railroad Comm. of Wisconsin vs. C. B. & Q., 257 U. S. 563.

In deciding the Minnesota Rate Case, the Supreme Court of the United States held that:

> "The power of Congress to regulate commerce among the several states is supreme and plenary. It is 'complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution.'"
>
> *Minnesota Rate Case*, 230 U. S. 352, 398, citing Gibbons v. Ogden, 9 Wheaton, 1.

The Supreme Court further held that:

> "there is no room in our scheme of government for the assertion of state power in hostility to the authorized exercise of federal power. The authority of Congress extends to every part of interstate commerce, and to every instrumentality or agency by which it is carried on, and the full control by Congress of the subjects committed to its regulation is not to be denied by the commingling of interstate and intrastate operations."

State commissions may act in such matters under authority vested in them by state statutes until the Congress has vested the Federal Commission with similar power, and whenever the Federal Govern-

ment undertakes to regulate such matters the power of the state commission is automatically divested.

> "Wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves the control of the other, it is Congress and not the state that is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority and the state and not the nation would be supreme within the national field."
>
> (*Houston, etc. R. Co. v. U. S.*, supra.)

In deciding the case of Akron C. & Y. Ry. Co. vs. U. S., decided February 19, 1923, U. S. Supreme Court Advance Opinions, No. 10308, this court held that the

> "Transportation Act, 1920, introduced into the Federal legislation a new railroad policy. * * * Theretofore, the effort of Congress had been directed mainly to the prevention of abuses; particularly, those arising from excessive or discriminatory rates. The 1920 Act sought to insure, also, adequate transportation service. That such was its purpose, Congress did not leave to inference. The new purpose was expressed in unequivocal language. And to attain it, new rights, new obligations, new machinery, were created. The new provisions took a wide range. Prominent among them are those specially designed to secure a fair return on capital devoted to the transportation service. Upon the Commission new powers were conferred and new duties were imposed."

Mr. Chief Justice Taft, speaking for an unanimous court in deciding the case of *Railroad Commission of Wisconsin, et al., v. C. B. & Q. R. R. Co.*, supra, where the comprehensive amendments to the Federal statute were under review, held that:

> "Congress in its control of its interstate commerce system is seeking in the Transportation Act to make the system adequate to the needs of the country by securing for it a reasonable compensatory return for all the work it does. The states are seeking to use that same system for intrastate traffic. That entails large duties and expenditures on the interstate commerce system which may burden it unless compensation is provided for the intrastate business reasonably proportionate to that for the interstate business. Congress as the dominant controller of interstate commerce may, therefore, restrain undue limitation of the earning power of the interstate commerce system in doing state work. The affirmative power of Congress in developing interstate commerce agencies is clear. *Wilson v. Shaw*, 204 U. S. 24; *Luxton v. North River Bridge Co.*, 153 U. S. 525; *California v. Pacific Railroad Company*, 127 U. S. 1, 39. In such development, it can impose any reasonable condition on a state's use of interstate carriers for intrastate commerce it deems necessary or desirable. This is because of the supremacy of the national power in this field."

The Railroad Commission of the State of California likewise apparently recognizes that the Interstate Commerce Commission has, by the amendments of the Federal statute, been vested

with exclusive jurisdiction in matters relating to the abandonment or extension of lines or the consolidation of terminal facilities.

This statement is supported by the decision rendered by the Commission on April 26, 1921 (Tr. 68), where it was held:

> "The recognition of the necessity that in the future we must have in this country unified railroad terminal development in the larger cities has been definitely incorporated by Congress in the new Transportation Act. It is in that Act also recognized that it will not be sufficient to leave the necessary terminal unification to the carriers alone. *Power is given the Interstate Commerce Commission in the Esch-Cummins Act, to order terminal unification.* This, it seems to us, is a sound and inevitable development. With the present relation between the railroads and the people, whereby the government undertakes to fix rates under a prescribed system, designed to give to the railroads, as nearly as may be, a guaranteed income, in addition to a guaranteed reimbursement of operating expenses, it seems self-evident that every effort must be made to furnish the best possible transportation facilities at the lowest possible cost. * * *"

It therefore appears that the Railroad Commission of the State of California and the highest court of that state have confirmed respondent's understanding of the law.

Petitioner, however, specifies as errors for the reversal of the judgment of a state court that:

> "The California commission has authority under state law * * * to order the three railroad companies to erect a union depot.
>
> The state Court erroneously construed the federal statute amendatory of the Interstate Commerce Act as having deprived the state of this jurisdiction and vested it in the Interstate Commerce Commission.
>
> The state Court failed to give effect to the proviso of Section 1, paragraph 17 of the amended Interstate Commerce Act and to the principle announced in the case of Missouri Pacific Railway Company v. Larabee Flour Mill Company, 211 U. S. 612." (Br. pp. 18, 19.)

Counsel argues that the state's power remains unimpaired and the state commission's order is valid unless the Interstate Commerce Commission makes an inconsistent order.

In other words it is the contention of petitioner that notwithstanding the fact that Congress has vested the Interstate Commerce Commission with the control and supervision of the financial and physical operations of carriers, including the all important questions of extensions and abandonment of their lines, consolidation and joint use of main tracks and terminal facilities, these powers confided to the interstate Commerce Commission, unless actually exercised in a particular case, leave any powers which may be vested in the state commission unimpaired and in full force and effect.

Petitioner contends that the case of *Missouri Pacific Ry. Co. v. Larabee Flour Mills Co.*, 211 U. S. 612, is controlling.

In that case the jurisdiction of the Supreme Court of Kansas was invoked by the Mill Company for a writ of mandate compelling the railroad to discharge its *common law* obligation of switching cars locally between a foreign line and the plant of the Mill Company. The right was not asserted under any State statute nor under any order rendered by a commission or other regulatory body. The refusal of the railroad company to perform this *local switching* "was based solely upon the ground" that certain demurrage charges had not been paid by the Mill Company and not upon the ground "that the service constituted a part of interstate commerce." After its refusal to switch for the Mill Company the railroad continued to perform similar services for other industries and this Court held that the railroad was obliged to treat all industries alike irrespective of any legislative enactment or special mandate from any commission because "the duty arose from the fact that it was a common carrier", and that this obligation, irrespective of legislative action or special mandate, could be enforced by the courts. This Court affirmed "the oft repeated rule that the State in the absence of express action by Congress may regulate matters which *indirectly* affect interstate commerce" and cited authorities in support of the well recognized rule that "the mere grant of such a power *to* Con-

gress would not imply a prohibition on the States to exercise the same power. That it is not the mere existence *of* such a power but its exercise *by* Congress which may be incompatible with the exercise of the same power by the States and that the States may legislate in the *absence* of Congressional legislation." The Court further held that merely because Congress had vested the Interstate Commerce Commission with "a large measure of control over interstate commerce," nevertheless in the absence of *specific* action by Congress or the commission the control of the State over these *merely incidental* matters remains undisturbed." The Court inferentially held that the switching involved was an "incidental matter" and that "this common law duty the State in a case like the present may, at least in the absence of Congressional action, compel a carrier to discharge."

It may be noted that the dissenting opinion by Mr. Justice Moody, with which Mr. Justice White concurred, and with which Mr. Justice Holmes stated he was inclined to agree, held that assent could not be given to the proposition that although Congress had vested the Federal Commission with authority to deal with the exact situation presented this fact was immaterial because the Commission had taken no action.

But for the purposes of this argument we will accept the views expressed in the majority opinion as settled law. Nevertheless it is our contention

that the Larabee case does not support petitioner's conception of the law but is wholly inapplicable because under the facts set forth in that decision it appears that the Court was dealing with what the opinion aptly styled "regulations of a local character", namely, a local switching service, which was characterized by the court as "incidental matters", whereas in the case at bar we are dealing with orders requiring three transcontinental railroads engaged largely in interstate commerce to expend millions of dollars in extending and abandoning their main lines, and enlarging, abandoning and consolidating their terminal facilities.

The principle of the Larabee Case has no application here because of the Transportation Act itself Congress has put an inhibition upon the carriers, coupled with severe penalties, prohibiting them from extending their lines, from abandoning lines, from consolidating lines, except upon permission first obtained from the Interstate Commerce Commission. By such action Congress has clearly taken away from any other body except the Interstate Commerce Commission power to compel the carriers to do these very things, whereas, in the Larabee Case, Congress had merely at the most conferred upon the Interstate Commerce Commission general power upon the complaint of shippers to enter specific orders regulating the practices of carriers relating to switching.

Congress Has "Acted" by Exercising Its Constitutional Authority in Regulating the Matters Covered by the Commission's Orders and Power Thus Exercised Is Incompatible with the Exercise of the Same Power by the States.

It can not be held that the orders of which complaint is made here are merely "local" or "incidental", but it is apparent that the orders directly interfere with and burden interstate commerce, and that irrespective of any action by the Commission, Congress has "specifically acted" in adopting the amendments to the Interstate Commerce Act of 1920.

In deciding the case of *Southern Ry. Co. v. Railroad Comm. of Indiana*, 236 U. S. 439, 446-8, the Court held:

> "The test, however, is not whether the State legislation is in conflict with the details of the Federal law or supplements it, but whether the State had any jurisdiction of a subject over which Congress had exerted its exclusive control."

The question to be determined here, as in the case of *Southern Ry. Co. v. Reid*, 222 U. S. 436, is "to what extent and how directly must it (the power of Congress) be exercised to have * * *" the effect of superseding the concurrent power of the State which might be exercised in the absence of Congressional legislation.

After quoting the rule announced in the Larabee case the Court held that "the principle of that case, therefore, requires us to find specific action either by Congress in the Interstate Commerce Act or by the Commission covering the matters which the statute * * * attempts to regulate." "Does it (the action by Congress) * * * take control of the subject-matter and impose affirmative duties upon the carriers which the State cannot even supplement? In other words, has Congress taken possession of the field?"

In the case of *Southern Ry. Co. v. Reid & Beam*, 222 U. S. 444, 447, referring to the preceding decision in the Reid case, the Court held that "there need not be directly 'inhibitive congressional legislation,' but congressional legislation which occupies the field of regulation and thereby excludes action by the State."

The Larabee case was again cited by this Court in deciding the case of *M. K. & T. Ry. Co. of Texas v. Harris*, 234 U. S. 412, 417, and, as in the Reid case, emphasis was laid upon the fact that interstate commerce was only "incidentally affected" and was not "directly burdened or interfered with" by the judgment of the State Court enjoining upon the carrier the duty of discharging its common law obligation. It was held by the Court in the case last cited that the State statute only dealt with a question of costs "respecting which Congress had

not spoken" and that "only until Congress did speak the State might enforce its statutes which only 'incidentally' affected interstate commerce." Where, however, a State statute or an order of a State commission does not merely "incidentally" affect interstate commerce, but does directly interfere with or burden interstate commerce, this Court has uniformly held that the authority sought to be exercised by the States either through the medium of their administrative or judicial tribunals must fall and the carriers relieved from complying with any such orders.

> "When Congress acts in such a way as to manifest its purpose to exercise its constitutional authority the regulating power of the State ceases to exist."

Erie R. R. Co. v. N. Y., 233 U. S. 671.

Minnesota Rate Cases, 230 U. S. 352, 399-412.

Houston, East & West Texas Ry. Co. v. U. S., 234 U. S. 342.

N. Y. C. R. R. Co. v. Hudson County, 227 U. S. 248, 264.

Second Employers' Liability Cases, 223 U. S. 47-8, 53-55.

Southern Railroad Co. v. Railroad Commission of Indiana, 236 U. S. 439, 446-448.

A. T. & S. F. Ry. Co. v. Harold, 241 U. S. 371, 378-379.

T. & P. Ry. Co. v. Rigsby, 241 U. S. 33, 41-42.

Southern Ry. Co. v. Prescott, 240 U. S. 632, 639-640.

Atlantic Coast Line R. R. Co. v. Georgia, 234 U. S. 280, 291-4.

Pa. R. R. Co. v. Public Service Commission, 250 U. S. 556, 569.

Spokane & Inland R. R. v. Campbell, 241 U. S. 497, 509.

Boston & Maine R. R. v. Hooker, 233 U. S. 97, 110.

A. T. & S. F. Ry. v. Robinson, 233 U. S. 173-180.

Seaboard Air Line Ry. v. Horton, 233 U. S. 492, 501.

Taylor v. Taylor, 232 U. S. 363, 368.

St. Louis, etc. Ry. Co. v. Seale, 229 U. S. 156, 158.

St. Louis, I. M. & S. Ry. Co. v. Hesterly, 228 U. S. 702, 704.

Michigan Central R. R. Co. v. Vreeland, 227 U. S. 59, 66-7.

St. Louis v. Edwards, 227 U. S. 265, 268-9.

To borrow the language used by this Court in deciding the case of *Adams Express Co. v. Croninger*, 226 U. S. 491:

> "Almost every detail of the subject is covered so completely that there can be no rational doubt but that Congress intended to take possession of the subject and supersede all State regulation with reference to it."

Railroad Comm. of Wisconsin v. C. B. & Q. R. R. Co., supra.

Akron C. & Y. Ry. Co. v. U. S., supra.

The language employed by this Court in deciding the case of *Northern Pacific v. Washington*, 222 U. S. 370, 378, aptly states the rule to be followed in determining whether *Congress* has acted.

> "It is elementary, and such is the doctrine announced by the cases to which the court below referred, that the right of a State to apply its police power for the purpose of regulating interstate commerce, in a case like this, exists only from the silence of Congress on the subject, and ceases when Congress *acts* on the *subject or manifests its purpose to call into play its exclusive power*. This being the conceded premise upon which alone the state law could have been made applicable, it results that as *the enactment by Congress* of the law in question was an assertion of its power, *by the fact alone of such manifestation* that subject was at once removed from the sphere of the operation of the authority of the State."

See also *Gulf, etc. Ry. Co. v. Hefley*, 158 U. S. 98, 104-5.

The most cursory examination of the Interstate Commerce Act as now amended, particularly Subdivision 15 of Section 1; Subdivisions 18 to 22, inclusive, of Section 1; Subdivision 4 of Section 3; Subdivision 4 of Section 5; section 15a, and Section 20a, will bear out the statement that the powers which have been confided to the Federal Commission are incompatible with the exercise of the same powers by the states. This court characterized the provisions found in Section 15a of the act as "the most novel and most important features of the

act * * *," as it requires the Commission to prescribe rates so as to enable carriers engaged in interstate commerce, as a whole or in groups selected by the Commission, to earn an aggregate annual net railway operating income equal to a fair return upon the aggregate value of the railway property used in transportation, and sought to avoid excessive incomes accruing to the carriers better circumstanced by using one half of the excess for loans to other carriers. The provisions of Subdivision 4 of Section 5 are also novel and make a "radical departure" in enjoining upon the Commission the duty "as soon as practicable" to adopt a plan "for the consolidation of the railway properties of the continental United States into a limited number of systems."

> "The act further put under the control of the Interstate Commerce Commission, 1st, the issuing of future railroad securities by the interstate carriers; 2nd, the regulation of their car supply and distribution and the *joint use of terminals;* and, 3rd, their *construction* of new lines, and their *abandonment* of old lines.
> * * * * * * * *
> The new measure imposed an affirmative duty on the Interstate Commerce Commission to fix rates and to take other important steps to maintain an adequate railway service for the people of the United States. This is expressly declared in Section 15a to be one of the purposes of the bill."
>
> *Railroad Comm. of Wisconsin v. C. B. & Q. R. R. Co.*, supra.

The policy declared by Congress is national in its scope and in administering the act the Commission is enjoined to give consideration to the transportation needs of the country and the "necessity of enlarging facilities" to "best promote the services in the interest of the public and the commerce of the people" and to this end Congress has established the Railroad Labor and Adjustment boards, has vested the Federal Commission with power relating to the raising of capital by new government loans, loans from the general railroad contingent fund, the issuing of new securities, consolidation of railroads into a limited number of systems, joint use of terminals, and the interchange of traffic.

It is for the Federal Commission to say whether there is necessity for the enlargement of facilities and to determine whether conditions and betterments are necessary or whether the amounts expended therefor are reasonable, whether the management of the interstate carriers has been honest, efficient, and economical, to determine what expenditure shall be charged, and capital account, and operating expenses. The declared national policy of Congress can not be carried into effect but will be hampered and retarded, and interstate commerce burdened if not destroyed, and the transportation systems of the nation demoralized, if the states are to be left free to enter orders such as these.

The States Can No More Supplement the Requirements of the Federal Statute than They Can Annul Them.

Counsel for petitioner in attempting to uphold the jurisdiction of the State Commission suggest in the brief filed in support of petition for the writ, page 29, that if in "partial compliance with the State Commission's orders it should become necessary to invoke the jurisdiction of the Interstate Commerce Commission in connection with any part of the work, such as the joint use of tracks or for the issuance of securities" * * * "there is no reason why application therefor can not be made to the Interstate Commerce Commission at that time." In effect they are suggesting the concurrent jurisdiction of the Federal and State Commissions. Any such contention is opposed to the authorities already cited.

In deciding the case of *Southern Ry. Co. v. Railroad Commission of Indiana*, 236 U. S. 439, 446-448, the Court cites the case of *Prigg v. Commonwealth of Pennsylvania*, 16 Pet. 539, 617, where it was held:

> "If Congress have a constitutional power to regulate a particular subject, and they do actually regulate it in a given manner, and in a certain form, it cannot be that the state legislatures have a right to interfere; and, as it were, by way of complement to the legislation of Congress, to prescribe additional regulations, and what they may deem auxiliary provisions for the same purpose."

In deciding the case of *Erie R. R. Co. v. N. Y.*, 233 U. S. 671, it was held that notwithstanding a Federal statute did not become operative until a year after its adoption, that nevertheless the State could not in the interim enforce similar legislation upon the ground that "the State had simply supplemented the action of the Federal authorities." It was held that there may not be a division of the field of regulation "but an exclusive occupation of it when Congress manifests a purpose to enter it."

It was held in the case of *Pennsylvania R. R. Co. v. Public Service Commission*, 250 U. S. 566, 569:

> * * * * "When the United States has exercised its exclusive powers over interstate commerce so far as to take possession of the field, the States no more can supplement its requirements than they can annul them." Citing cases.

The rule is well stated in the case of *Charleston & Western Carolina Ry. Co. v. Varnville Furniture Co.*, 237 U. S. 597, 604.

> "When Congress has taken the particular subject-matter in hand coincidence is as ineffective as opposition, and a state law is not to be declared a help because it attempts to go farther than Congress has seen fit to go." Citing cases.

Petitioner has argued, page 19 of brief filed in support of petition, to the effect that the California statute is broader in its scope than the Interstate Commerce Act because no provision is contained in the Interstate Commerce Act authorizing the erec-

tion of "union passenger depots." But as has already been shown, it will become necessary in erecting a union passenger depot to extend and abandon main lines and terminal facilities of respondents, consolidate their terminal facilities and provide for the interchange of traffic, which are particular subjects of regulation which now have been confided to the Federal Commission. Under the authorities last cited it can not be held that even though the California statute is susceptible to the interpretation placed upon it by petitioner's counsel, and "attempts to go farther than Congress has seen fit to go" it thereby is resurrected and given efficacy. As was said in the case of *Gulf etc. Ry. Co. v. Hefly, supra*:

> "It is unnecessary to pursue this discussion further. The State statute and the national law operate upon the same subject-matter, and prescribe different rules concerning it. The national law is unquestionably one within the competency of Congress to enact under the power given to regulate commerce between the States. The State statute must, therefore, give way."

Construction Placed Upon the Transportation Act by State Courts.

The courts of several of the States have, since the Interstate Commerce Act was amended in 1920, had occasion to consider the relative jurisdiction of the Interstate Commerce Commission and State commissions as affected by these amendments.

The case of *State ex rel, etc. v. Atlantic Coast Line R. R. Co., Florida*, 87 Southern Reporter, 773, decided February 15, 1921, involved the construction of the Transportation Act, 1920, and involved the jurisdiction of the State Commission to require a railroad to make a physical connection between its lines and the wharf operated by the Clyde Steamship Company. The Supreme Court of Florida had in an earlier decision required the carrier to make such connection under the provisions of the Florida statute but upon its attention being directed to the provisions contained in the Transportation Act, vesting the Interstate Commerce Commission with power to compel carriers to make such physical connections between their lines and water carriers, held that the

> "entire and exclusive jurisdiction over the matter of requiring physical connection between rail and water carriers has been given by Congress to the Interstate Commerce Commission, and there is no field for the operation of State laws, or control by the State Railroad Commission, over the same subject-matter."
>
> "Until Congress gave to the Interstate Commerce Commission entire and exclusive jurisdiction over the matter of physical connection between rail and water carriers, the State had full power and jurisdiction over the subject; but when Congress exercised the power, and lodged the entire and exclusive jurisdiction over it in the Interstate Commerce Commission, the right of the State over the same subject-matter was extinguished."

At page 778 of the opinion the Court cites the case of *Missouri Pacific Ry. Co. v. Larabee Flour Mills Co.*, supra, and distinguishes the case upon the ground that in the Larabee case Congress had not expressly vested the Interstate Commerce Commission with the "power and duty with regard to switching service" and held that if such authority had been vested in the Federal Commission to the same extent that it had vested the Commission with power to require physical connections between rail and water lines, that the Supreme Court of the United States would have held otherwise.

Congress has, by Subdivision 4 of Section 3 of the amended act, expressly vested the Interstate Commerce Commission with power to require carriers owning terminal facilities to permit the use by other carriers of such terminal facilities including the main track or tracks for a reasonable distance outside of such terminals.

We direct the Court's attention to the fact that there is no express provision in the Public Utilities Act of California requiring one railroad to admit another to the joint use of its private property. If any such power is found it is in Section 41 of the Act, which merely authorizes the California Commission to admit another carrier to the joint use of its tracks situated on, over or under any street or highway. No power is conferred upon the California Commission to compel the joint use of

tracks where they are situated on privately owned right of way, but even though such power had been conferred the Federal statute would nevertheless be controlling.

The Supreme Court of the State of New York has likewise held that an order of the Public Service Commission of that State requiring carriers to make connections between their lines and to provide such tracks and facilities as "may be necessary to establish and furnish adequate and convenient interchange of freight * * *" is repugnant to the provisions of paragraph 2 of Section 3 of the Interstate Commerce Act, as amended in 1920, requiring carriers to provide for the interchange of traffic between their respective lines, and that the Congressional Act "excludes the jurisdiction of the State Public Service Commission to make the same requirements of interstate carriers under the principle that Congress having delegated to the Interstate Commerce Commission power to deal with the subject matter, an exercise of like power by the State is thereby superseded."

> *People v. Public Service Comm.*, 135 N. E. 195, 196, 197.

The case of *People, ex rel New York Central R. R. Co. v. Public Service Commission*, 190 N. Y. Supplement, 636, holds that the Transportation Act as amended,

> "not only gives the Interstate Commerce Commission power to establish physical connection

between lines of rail carriers and docks, but also to direct rail and water carriers, singly or jointly, to construct and connect with lines and to determine and prescribe the terms and conditions of operating such connections, and that thereby "such matters are entirely removed from the State and its Public Service Commission has no authority to order such connections."

This decision was affirmed in a memorandum opinion by the New York Court of Appeals, 134 N. E. 590, that court simply saying that the subject matter of the controversy had by the Transportation Act of 1920 been relegated to the Interstate Commerce Commission. Thereupon application was made to the Supreme Court of the United States for a writ of certiorari, which application was denied without an opinion (258 U. S., 621).

The latest case which has been brought to our attention is that of *Shealy, et al. v. Southern Ry. Co.*, decided by the Supreme Court of the State of South Carolina, April term, 1923 (opinion not yet published), involving the jurisdiction of the Railroad Commission of South Carolina to compel the railway company to construct certain station sheds at a station on its lines. The Court refers to previous decisions rendered by it sustaining the power of the State Commission to enter such orders, but states that the cases cited are not controlling by reason of the fact that:

> "The Transportation Act of 1920 effected a radical departure, and introduced into Federal legislation a new railroad policy. It has placed the entire control over rates, properties, tracks, terminals and facilities of railroads engaged in interstate commerce, in and under the jurisdiction of the Interstate Commerce Commission."

The Court supports its decision by the case of *Akron C. & Y. Ry. Co. v. U. S.*, cited therein, and cites with approval the decision rendered by the Supreme Court of the State of California in the case at bar. The Court further held:

> "Another consideration is conclusive of the purpose of the Act to control the matter of non-productive, additional facilities and terminals, and having pre-empted this field, all regulation by the States is interdicted. This matter is not only subjected to the control of the I. C. Commission, but it is so inter-related with the purpose of the Act in supervising transportation facilities and in fixing rates, that interference by the States therewith necessarily affects interstate commerce."

The Court then goes on to analyze the amendments of 1920 to the Federal statute and holds that the policy announced by Congress will be thwarted and will result "in the complete breaking down and ultimate failure of the Constitutional purpose * * *" if the States are permitted to continue to exercise the powers relating to the enlargement and extension of transportation facilities by interstate carriers.

We have been able to find but two decisions rendered by state courts where a rule contrary to that announced by the Supreme Court of the State of California is sustained. That of *C. R. I. & P. Co. v. State of Oklahoma,* 217 Pac. Rep. 147, where it was held that, notwithstanding the amendments made to the Transportation Act, 1920, the State of Oklahoma still might, through its Corporation Commission, require railroads engaged in intrastate and interstate commerce to provide adequate passenger facilities "except when such orders are inconsistent with some lawful order of the Interstate Commerce Commission or when said orders amount to an unjust discrimination against interstate commerce or amount to an unjust and unreasonable burden on interstate commerce and would interfere with the railroads in complying with their obligations in relation to interstate commerce." This case was decided prior to the announcement of the decision by this court in the Akron case. The state court reached the conclusion that by the amendments to the Federal Statute, Congress did not intend to occupy the field of regulating interstate commerce to the extent of preventing the state commissions from compelling carriers to enlarge their passenger facilities unless the Interstate Commerce Commission had previously entered such an order. The court gives no consideration to the broad scope of Federal regulation or the adoption of the new Congressional policy as so thoroughly outlined in the case of *Akron C. & Y. Ry Co. v. U. S.*, and

Shealy et al. v. Southern Ry. Co., supra, but rests its decision largely upon the proviso of Subdivision 17 of Section 1 of the act. It would appear that the Oklahoma court, in an effort to sustain the jurisdiction of the State Corporation Commission, has placed a narrow and strained construction upon the amended Interstate Commerce Act and has given no consideration to the conflict which would inevitably result from such construction of the Federal statute. Orders such as were entered by the Oklahoma Commission would directly interfere with and burden interstate commerce.

The Supreme Court of North Carolina has rendered a decision, the full text of which is not at hand, and we are therefore unable to review this decision at this time.

The foregoing authorities make it apparent that the state courts where questions similar to those in the case at bar have been raised have, with the exceptions noted, held in accordance with the California court that the statutes of their respective states have been superseded and the powers with which their Public Service Commissions were formerly vested have been circumscribed and superseded by the adoption of the new national railroad policy.

The Decisions of the Interstate Commerce Commission, Construing the 1920 Amendments to the Interstate Commerce Act, are in Harmony with the Decision of the Supreme Court of California.

In deciding the case of *T. & P. Ry. Co. v. Abilene*, 204 U. S. 426, 433, it was held that the conclusion reached by the court was "greatly fortified * * * by the * * * reports and decisions of the Interstate Commerce Commission" and it therefore may be well in passing to direct the court's attention to the numerous decisions rendered by the Interstate Commerce Commission wherein the Commission has assumed jurisdiction of matters involving questions arising under the amendment to the Interstate Commerce Act of 1920.

In construing the amendment to Section 3 of the Act relating to the interchange of traffic between connecting carriers, the Commission has held:

> "As amended by the Transportation Act this provision of the law gives us a direct and explicit power to require the use by one carrier of the 'terminal facilities' of another carrier upon certain conditions. It is apparent that the policy of Congress was thus reversed."
>
> *Hastings Commercial Club et al. v. C. M. & St. P. Ry. Co.*, 69 I. C. C. 489, 493.

It will be found that in rendering its decision in the Cleveland Passenger Terminal Case, decided August 21, 1921, 70 I. C. C. 342; decision on re-

hearing same case, December 6, 1921, 70 I. C. C. 659; the Commission authorized the carriers to construct a joint passenger terminal at Cleveland, after giving consideration to the question whether the terminal facilities were required to meet the demands of interstate traffic, whether the location of the union terminal would serve the convenience of interstate passengers, *whether the cost of financing the construction of the terminal was such as to unduly burden interstate commerce.* The Commission reviewed the entire situation relating to all the business of the carriers, state and interstate.

In determining the questions raised by the *Application of Illinois & Kentucky R. R. Co.* to construct line between Edgewood and Metropolis in the State of Illinois, 82 I. C. C. 100, 105, it was held by the Commission: "In our consideration of applications under paragraph 18 of Section 1 of the Interstate Commerce Act we are concerned primarily with the requirements of public convenience and necessity."

The Federal Commission has asserted jurisdiction over these subjects in granting the certificate authorizing Oregon Short Line Railroad to construct a line in Idaho, a distance of 2.66 miles, under the provisions of paragraph 18 of Section 1.

82 I. C. C. 133;
Abandonment of Caddo & Choctaw Railroad,
82 I. C. C. 90.

The Interstate Commerce Commission has constantly exercised its jurisdiction to grant authority to interstate railroads subject to its jurisdiction to either construct or abandon short stretches of line.

> Application for abandonment of branch line by Great Northern denied. 72 I. C. C. 25.
>
> Application for construction of line in Michigan by Michigan Northern denied. 72 I. C. C. 21.
>
> Application of C. & A. R. R. Co. for authority to construct line of railroad granted. 72 I. C. C. 1.
>
> Application of Silverton Ry. Co. for authority to abandon its line of railroad granted. 72 I. C. C. 13.
>
> Application of Virginia & Western Ry. Co. for authority to extend its line of railroad granted; permission to retain excess earnings denied. 72 I. C. C. 55.

It thus appears that the Interstate Commerce Commission has placed a practical construction upon the amendments of 1920, has asserted and exercised jurisdiction over these matters, and that the carriers which are subject to the jurisdiction of that Commission have believed it necessary to invoke the jurisdiction of the Commission to obtain these permissive orders before making extensions or abandoning portions of their line and terminal facilities, even though they involve but short stretches of track. The carriers could not proceed otherwise because of the severe penalties imposed

by the amendments for failure to obtain permission of the Federal Commission before extending or abandoning lines or consolidating terminal facilities.

THE PROVISO FOUND IN SUBDIVISION 17 OF SECTION 1 OF THE TRANSPORTATION ACT OF 1920 DOES NOT RESERVE TO THE STATE POWER TO MAKE THE ORDERS HERE INVOLVED.

That proviso reads as follows:

> "Provided, however, that nothing in this act shall impair or affect the right of a state in the exercise of its police power to require just and reasonable freight and passenger service for intrastate business, except in so far as such requirement is inconsistent with any lawful order of the Commission made under the provisions of this act."

The proviso is contained in the paragraph which makes provision for the Commission to act through such agencies as it shall designate to carry out its orders relating to "car service" as defined in paragraph 10 of the section, and in cases of emergency as provided in paragraph 16 of the section, and where carriers are unable to transport the traffic offered as provided in paragraph 17 of the section, the remaining part of section 17 relating to the penalties which may be imposed by the Courts for failure of a carrier to follow its directions as to car service and to the matters referred to in paragraphs 15 and 16.

It would appear that the proviso relates exclusively to these matters and the only practical construction which can be placed on the proviso is that it merely reserves to the states the right to require just and reasonable passenger service for *intrastate* business in these particulars.

In any event the proviso is not susceptible to the construction that it is operative in cases such as this, where the Commission's orders directly interfere with and burden a large volume of *interstate* traffic. Nor will it bear an interpretation which will prevent the Interstate Commerce Commission from discharging its affirmative duty "to maintain an adequate railway system service for the people of the United States" which is "expressly declared in Section 15a to be one of the purposes of the bill."

> *Railroad Comm. of Wisconsin v. C. B. & Q.*, supra.

This proviso neither confers power on the state authorities, nor takes power from the Interstate Commerce Commission. It declares a rule of construction; and it is the same rule which courts have followed and which they would have adopted in construing the Transportation Act without the proviso. For surely no one would assert that the amended act without the proviso deprives a state of power

to require carriers to furnish equipment and move shipments and passengers from point to point in that state with reasonable dispatch and furnish all necessary facilities for handling such *local* business.

But the proviso is strictly limited to this local intrastate business. It does not even save to the state the right to make orders which indirectly or incidentally affect interstate commerce where such orders are made under the police powers of the state; as for instance the number of local trains which shall be run, the times and speeds at which such trains shall be operated, and kindred matters. Those regulations must rest now, as heretofore, on the general police powers of the state.

But in the case at bar the action of the state is not limited to intrastate business. The purpose of the orders would not have been achieved if so limited. Los Angeles is the most populous city in the western half of the United States. And these orders run against three transcontinental lines, the passenger traffic of each of which, in and out of Los Angeles, is chiefly interstate. Here is the western terminal of the Salt Lake Line, now a part of the Union Pacific System; the chief western terminal of the Atchison Line; and one of the main terminals of the Southern Pacific Line.

This is no matter of a waiting room at a way station but of a great new edifice to accommodate all the passengers, mail, express and baggage arriving and departing at one of the largest cities in the country.

It would be folly for the state to say to these carriers: You must receive and set down all your intrastate passengers at Los Angeles on the platform of a union station. Unless the state may control the handling of the passenger traffic, interstate as well as intrastate, and may order that all the business should be handled at one station, including mail, passengers, express and baggage, the whole purpose of the order fails. For the State Commission aims by its order to end the delivery and receipt of passengers, baggage, etc., at the existing stations, especially the large and comparatively new Southern Pacific station.

The Interstate Commerce Commission could not regulate the transportation of interstate carriers from a national standpoint if state commissions were permitted to interfere with and burden interstate commerce to the extent such traffic would be affected by orders such as these, and the Congressional policy to place the entire control of railroad properties, rates, finances, operation, terminals, and facilities under the jurisdiction of the Interstate Commerce Commission would be rendered

nugatory and the Interstate Commerce Commission would be impotent to carry into effect the provisions of Section 15a of the act, and of Subdivision 4 of Section 5, which enjoins upon the Interstate Commerce Commission the duty "as soon as practicable" to "adopt a plan for the consolidation of the railway properties of the United States into a limited number of systems."

When consideration is given to the "new national policy" sought to be accomplished by Congress in adopting the comprehensive amendments of 1920, the only reasonable and practical construction which can be placed upon the proviso without doing violence to the declared policy of Congress is that the several states may issue necessary orders "to require just and reasonable freight and passenger service for *intrastate* business * * *" in cases where such orders do not directly affect or interfere with or burden interstate commerce.

Counsel quotes from the Congressional Record (brief for petition, pp. 30, 31) to aid in construing the amended act, but the language used in the act is clear and unequivocal and in construing the amended act this court has held:

> "Great stress is put on the legislative history of the Transportation Act to show that

the bill was not intended to confer on the Commission power to remove any discrimination against interstate commerce involved in a general disparity between interstate and intrastate rates. Committee reports and explanatory statements of members in charge made in presenting a bill for passage have been held to be a legitimate aid to the interpretation of a statute which in its language is doubtful or obscure. (Citing cases.) But when taking the act as a whole the effect of the language used is clear to the court, extraneous aid like this cannot control the interpretation. (Citing cases.) Such aids are only admissible to solve doubt and not to create it."

Railroad Comm. of Wisconsin v. C. B. & Q. et al., supra.

In the event the interpretation placed upon this proviso by counsel in their brief in support of petition, pp. 42, 43, were to be adopted, it would result in the absurd conclusion that after Congress has delegated to the Interstate Commerce Commission the comprehensive power to permit carriers to extend or abandon lines, to permit and require the consolidation of terminal facilities and the joint use of facilities, provide for the consolidation of the lines of interstate carriers into separate systems, to determine the percentage of return constituting a fair return upon the value of the carrier's property to permit the issuance of securities,

the power so confided to the Federal Commission should lie dormant and leave the states free to legislate directly or through the medium of commissions, relative to all of these matters until the Interstate Commerce Commission itself determined directly or by inference that a particular state statute should be superseded. Until the Interstate Commerce Commission had completed consolidation of the lines of the interstate carriers throughout the United States, had completely regulated their finances in all particulars, had fully acted in determining what extensions, abandonments and joint use of facilities should be permitted, at every point in the United States served by the lines of an interstate carrier, the state commissions, under petitioner's conception of the law, would be free to act, ordering the carriers to expend millions of dollars in these particulars and requiring them to enlarge and consolidate their terminal facilities in a manner which in all human probability would not conform to the final orders entered by the Federal Commission. It is so apparent that any such interpretation of the statute would result in endless confusion and great waste that to state the proposition is to affirm it. As was stated by the court in the case of *Shealy et al. v. Southern Ry. Co.*, supra:

> "The effect of the Transportation Act of 1920 is to limit the power of the states over interstate commerce to an exceedingly circumscribed sphere. They have control of purely

> internal affairs, but that control in so far as it affects interstate carriers must be exercised in a manner that does not project the will of the particular state into other states of the Union. Stone v. F. L. & T. Co., 116 U. S. 334."

In deciding the case of *Adams Epress Co. v. Croninger,* 226 U. S. 491, this court, in speaking of the proviso found in the Carmack Amendment, held:

> "But it has been argued that the non-exclusive character of this regulation is manifested by the proviso of the section, and that state legislation upon the same subject is not superseded, and that the holder of any such bill of lading may resort to any right of action against such a carrier conferred by existing state law. This view is untenable. It would result in the nullification of the regulation of a national subject and operate to maintain the confusion of the diverse regulation which it was the purpose of Congress to put an end to."

This rule is particularly applicable to the case at bar for the reason that in the event the construction for which petitioners contend were placed upon the proviso, paragraph 17 of Section 1, it would not only "result in the nullification of the regulation of a national subject and operate to maintain the confusion of the diverse regulations which it was the purpose of Congress to put an end to," but would "directly interfere with and burden interstate commerce to such an extent as to actually destroy it."

We cannot better express our views than to quote from the Wisconsin case, supra, page 588, where this court, speaking of the "specific proviso of the original Interstate Commerce Act, repeated in the amending acts, that the Commission is not to regulate traffic wholly within a state," held that:

> "Commerce is a unit and does not regard state lines, and, while under the Constitution, interstate and intrastate commerce are ordinarily subject to regulation by different sovereignties, yet, when they are so mingled together that the supreme authority, the Nation, cannot exercise complete effective control over interstate commerce without incidental regulation of intrastate commerce, such incidental regulation is not an invasion of state authority or a violation of the proviso."

The Interstate Commerce Commission Has Taken Jurisdiction and Acted Respecting the Identical Subjects Embraced Within the California Commission's Orders.

Counsel for petitioner argue, original brief p. 33, that the "proviso found in paragraph 17 of Section 1 is in effect a Congressional enactment of the principle announced * * *" in the Larabee case, "namely, that, even when Congress has entered a particular field of interstate commerce and has authorized the Interstate Commerce Commission to exercise jurisdiction therein, nevertheless, unless the matter is to be handled by *general rule or regulation*, the states may continue to act as to particular situations until the Interstate Commis-

sion *takes action* as to such particular situations," thereby conceding that in the event the Interstate Commerce Commission has "taken action" upon the subject of the California Commission's orders the power of the State Commission is superseded and its orders have no efficacy.

If it were held that under the ruling of the Larabee case, or by virtue of the proviso found in Subdivision 17 of Section 1 of the act, the power of the California Railroad Commission to enter these orders continued until the Interstate Commerce Commission had "taken action" on the same subject matter, we find that the facts compel the conclusion that the state statute and powers sought to be exercised thereunder by the California Commission have nevertheless been superseded.

The Interstate Commerce Commission has actually "taken action" in issuing orders on the eighth day of July, 1921, after formal hearings "In the matter of applications under paragraphs 18 to 21, inclusive, Section 1, of the Interstate Commerce Act for certificate of public convenience and necessity for the construction or extension of lines of railroad, and applications under paragraph 18, Section 15a, of said act for permission to retain the excess earnings of newly constructed lines of railroad," and "In the matter of applications under paragraphs 18 to 21, inclusive, Section 1, of the

Interstate Commerce Act for certificate of public convenience and necessity authorizing the abandonment of lines of railroad or the operation thereof."

It, therefore, appears that "the matter is one to be handled by general rule or regulation * * *" and that "the Interstate Commerce Commission has taken action as to such particular situations * * *" referred to at page 3 of brief for petitions.

These orders entered by the Interstate Commerce Commission are binding upon the carriers and upon failure to comply therewith or to observe the provisions of the statute relating to extensions or abandonments, carriers engaged in interstate commerce would subject themselves to the imposition of the severe penalties prescribed by the act.

In the very cases under consideration, as is stated in the motions to advance, on file herein, "*the Interstate Commerce Commission is also confronted with the same question of jurisdiction which is now before this Honorable Court for final determination. After the decision by the Supreme Court of California, the City of Los Angeles filed a complaint before the Interstate Commerce Commission invoking its powers to order the erection, by the three railroads in question, of a union passenger depot in Los Angeles.*"

It may be added that since these motions to advance were filed the Interstate Commerce Commis-

sion in the case referred to in the motions, City of Los Angeles, Complainant, v. L. A. & S. L. R. R. Co. et al., Defendants, I. C. C. No. 14778, has acted upon the complaints filed therein and to which references were made in the motions, by conducting and concluding a formal hearing of the case, Commissioner Mr. Clyde B. Aitchison presiding, and wherein the California Railroad Commissioner, the petitioner now before this court, entered its appearance and participated in the proceedings, which involved precisely the *identical questions* that were presented to the Railroad Commission of the State of California in the cases now under review here.

The following authorities sustain the propriety of directing this court's attention at this time to the general orders entered by the Interstate Commerce Commission and to the action taken by that Commission in the case now pending before it, involving the identical questions determined by the California Commission in its decisions and orders, so as to avoid useless circuity of proceedings.

Dakota County v. Glidden, 113 U. S. 222;
Ridge v. Manker, 132 Fed. 599;
Kimball v. Kimball, 174 U. S. 158;
Gulf, etc. Ry. Co. v. Dennis, 224 U. S. 503.

ISSUES UNDECIDED BY THE SUPREME COURT OF THE STATE OF CALIFORNIA

We have argued that this court should only consider and undertake to decide the question determined by the Supreme Court of the State of California, which is the sole ground upon which petitioners have rested their petitions for writs of certiorari.

Nevertheless as counsel for petitioners have argued these other questions in their brief, we are moved by caution to incorporate an argument relating to them.

This Court May Examine the Entire Record, Including the Evidence, to Determine Whether Respondents' Constitutional Rights Claimed by Respondents Have Been Denied.

In the event that this court undertakes to determine the question whether the orders entered by the California Railroad Commission are unsupported by any evidence or are contrary to the evidence, it will be guided by the provisions of the California statute, relating to review of Commission's orders. Section 67 of the Public Utilities Act of California provides that, after the denial of an application for rehearing, "the applicant may apply to the Supreme Court of this state for a writ of certiorari or review * * * for the purpose of having the lawfulness of the original order or decision, or the order or de-

cision on rehearing, inquired into and determined * * *. The review shall not be extended further than to determine whether the Commission has regularly pursued its authority including a determination of whether the order or decision under review violates any right of the petitioner under the Constitution of the United States or of the State of California."

In the leading case of *Pac. Tel. & Tel. Co. v. Eshelman,* 166 Cal. 640, 694, the Supreme Court of the State of California held:

> "This court has expressly held that the clause 'whether the tribunal has regularly pursued its authority' is the equivalent of 'whether it has exceeded its jurisdiction'."

In deciding the case of *Marin Water Co. v. Railroad Commission of the State of California,* 171 Cal. 706, 713, the California court held, in construing Section 67 of the Public Utilities Act:

> "There is also a provision excluding questions of fact from review. Notwithstanding this, however, the law remains that when a finding or conclusion of fact is based upon uncontradicted evidence its accuracy usually becomes a mere question of law and in that event the question may be reviewed if it goes to the jurisdiction * * *."

The California court affirmed this rule in deciding the case of *Allen v. Railroad Commission*, 179 Cal. 68, 74:

> "When the question, ever one of mixed law and fact, goes, as here, to the jurisdiction itself, * * * to say that the determination of the commission upon this matter is final and conclusive and is not subject to review, is the equivalent of denying to a petitioner a hearing upon a right carefully preserved to him by the language of Section 67 itself—a hearing and a determination of whether the order and decision under review 'violates any right of the petitioner under the constitution of the United States or of the state of California'." (Citing cases.)

Petitioners are not suggesting that the court review the evidence introduced before the Commission in these proceedings for the purpose of determining controverted questions of fact but are asking the court to review the evidence to determine whether respondents' contention is correct that there is *no* evidence to support the Commission's findings, decisions and orders, and whether there were "such arbitrary and capricious actions on the part of the Commission as to violate the due process clause of the Constitution."

This court has held that

> "While it is true that upon a writ of error to a state court we cannot review its decision upon pure questions of fact, but only upon questions of law bearing upon the Federal right set up by

the unsuccessful party, it equally is true that *we may examine the entire record,* including the evidence, if properly incorporated therein, to determine whether what purports to be a finding upon questions of fact is so involved with and dependent upon such questions of law as to be in substance and effect a decision of the latter."

Kansas City Southern Ry. v. Albers Comm. Co., 223 U. S. 573;

Washington ex rel O. R. & N. R. Co. v. Fairchild, 224 U. S. 510;

Florida E. C. R. Co. v. U. S. 234 U. S. 173;

I. C. C. v. At. & S. F. Ry. Co., 234 U. S. 293.

Counsel for petitioners argue, in their supplemental brief, pages 11 et seq., the questions whether "the Commission's findings on questions of public convenience and necessity were final and conclusive under the California law," and cite authorities of the Supreme Court of the State of California in support of the contention that such findings are conclusive. Petitioners, however, state on page 16 of their brief:

> "However, notwithstanding section 67 of the Public Utilities Act and its own prior decisions, the California court in the particular cases under review failed to follow the undoubted principle of law above set forth."

Then after quoting from the decision of the Supreme Court of the State of California rendered in this case, it is said on page 17 of the brief:

> "Thus, the state court has apparently rendered a decision contrary to those previously rendered and contrary to the principle followed by this honorable court. In this respect, we respectfully submit, the Supreme Court of California has erred."

Notwithstanding the previous decisions of the Supreme Court of the State of California, the decision rendered by it in the case at bar, construing the California statute, is controlling. No authorities need be cited in support of this elementary rule and that the construction placed upon the California statute by the highest court of that state is binding upon this court. The case of *N. Y. & Queens Gas Co. v. McCall*, 245 U. S. 345, cited by counsel for petitioners, on page 14 of their brief, supports this elementary rule.

The general rule may therefore be stated that this court will review the evidence, findings, decisions and orders of the California Commission to determine whether any of the rights of the respondents guaranteed by the Constitution of the United States have been impaired.

THE ORDERS OF THE CALIFORNIA COMMISSION VIOLATE THE DUE PROCESS CLAUSE OF THE CONSTITUTION BECAUSE THEY ARE ARBITRARY, NOT SUPPORTED BY ANY EVIDENCE, AND ARE CONTRARY TO THE EVIDENCE.

Any Power that the California Commission Might Lawfully have Exercised in Entering Its Orders Was a Limited Power and Could Not be Exercised Arbitrarily.

The immediate question for determination is whether there was substantial or any evidence, introduced before the Railroad State Commission, which supports its findings, decisions and orders.

> "The legal effect of evidence is a *question of law*. A finding without evidence is beyond the power of the Commission. An order based thereon is contrary to law and must in the language of the statute 'be set aside by a court of competent jurisdiction'."
>
> *L. & N. R. R. Co. v. I. C. C.*, 227 U. S. 88, 92;
> *I. C. C. v. Union Pacific R. Co.*, 222 U. S. 541;
> *Northern Pacific Ry. Co. v. I. C. C.*, 216 U. S. 538, 544.
>
> "The law remains that when a finding or conclusion of fact is based on uncontradicted evidence, its accuracy usually becomes a mere question of law, and in that event the question may be reviewed if it goes to the jurisdiction."
>
> *Marin Water Co. v. C. R. C.*, 171 Cal. 706, 713.

The Grounds Upon Which The California Commission Seeks To Support Its Orders.

The Commission seeks to support the orders entered by it upon two main grounds; viz.:

So far as the Atchison, Topeka & Santa Fe Railroad Company, and the Los Angeles & Salt Lake Railroad Company are concerned, by the finding, "present passenger facilities of the *Santa Fe* and *Salt Lake stations* are inadequate." (Commission's Order Trans. 80.)

"As to the *Southern Pacific* depot, its continued use does not conform to any satisfactory plan for the elimination of the grade crossings on Alameda Street." (Commission's Order Trans. 140.)

The map incorporated in the brief filed by petitioners for writ of certiorari graphically shows the location of the three steam roads, including their main lines entering Los Angeles and their passenger terminal and other facilities. The lines of the Santa Fe enter from the north and proceed along the westerly bank of the Los Angeles River, reaching the passenger terminal at about the center of the diagram, and extending thence southerly and across the Los Angeles River. The tracks of this road, shown on the diagram, form a portion of its main line over which interstate traffic, both freight and passenger, is transported from and to eastern

destinations and from and to San Diego and other points in Southern California. The line of the Los Angeles & Salt Lake Railroad Company extends in a general northerly and southerly direction along the east bank of the Los Angeles River, and likewise forms a portion of the main line of its road over which interstate traffic is moved from and to eastern destinations and points in Southern California. These lines are remote from the main line of the Southern Pacific Company, operated northerly and southerly along Alameda Street to and through its passenger terminal shown on the diagram, and over which interstate traffic, both freight and passenger, is handled to points located northerly, southerly, easterly and westerly from its passenger station. It therefore appears that the Santa Fe and Salt Lake lines are in nowise concerned with the operation of grade crossings, except those on either bank of the river, and that the Southern Pacific Company is in nowise concerned with the grade crossings other than those on Alameda Street.

The interests of the three steam lines involved in the Commission's order must necessarily be separately considered in order to determine whether their constitutional rights have been impaired.

The Commission's Orders Cannot Be Supported by Finding That the Station Buildings of the Santa Fe and Salt Lake Lines Are Inadequate in View of the Undisputed Fact That Their Passenger Terminal Facilities Are Otherwise Adequate.

PASSENGER FACILITIES OF ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

The *uncontradicted evidence* shows that the passenger terminal facilities of the Santa Fe are adequate not only to provide for its own immediate and *future* needs but are also adequate to accommodate the traffic of all the steam lines, operating into a Union Terminal, which might be erected upon and operated in connection with its existing passenger facilities. The chief engineer of the California Railroad Commission in a report made at the request of the Commission, C. R. C. Exhibit No. 1, at page 290 stated that "the present site of the Santa Fe station and freight yards on the west bank of the river between First and Sixth Streets also appeared to offer a suitable location for a union passenger terminal, and we have made studies to show what is possible in this location. * * * "

At pages 291 and 292 of C. R. C. Exhibit No. 1, the Commission sets forth the advantages of the

existing Santa Fe passenger terminal facilities for a union station:

> "Adequate space is provided for station tracks; economical operation is possible; connection to Pacific Electric lines to the east is possible,—these are lines of heaviest traffic; no grade crossings of railroads are introduced; no changes in streets are necessary; a through terminal is provided; least expense for viaducts and trackage is required; least new capital is required; loss of property values is small; least amount of land is required for railroad purposes; lands now held for railroad use could be released; open door is made for future roads entering Los Angeles; railroads would be confined to natural channel, the banks of the Los Angeles River; this station would automatically do away with all passenger operation on Alameda Street. * * * All of the project is on the ground, as far as the steam roads are concerned. The approaches are on good grades with little or no curvature and with maintenance less than for elevated structures. No streets are crossed at grade by main line tracks."

It is significant that there is no finding made by the Commission in either of its orders that the terminal facilities to the Atchison, Topeka & Santa Fe at Los Angeles are inadequate, the only finding being that the passenger station *building* itself is inadequate and unsatisfactory and as a matter fact no such finding could have been made in view of the *uncontradicted evidence* contained in the engineer-

ing report made by the Commission's engineers. (California Railroad Commission Exhibit No. 1,) to which reference has been made.

Respondents contend that as a *matter of law* under the *undisputed facts* and in the absence of a finding that the terminal facilities are inadequate, it is beyond the power of the Commission to order the Atchison, Topeka & Santa Fe to abandon its existing passenger terminal facilities possessing these great advantages, and join in the expenditure of $36,000,000 where, by the expenditure of approximately one-half million dollars a handsome, adequate, safe, convenient and commodious station building could be erected thereby rounding out and completing a passenger terminal adequate and convenient for the needs not only of its own lines but all other lines serving the City of Los Angeles and any future lines entering that city.

Passenger Facilities of Los Angeles & Salt Lake Railroad Company

The passenger station *building* of the Los Angeles & Salt Lake Railroad Company is confessedly inadequate but the uncontradicted evidence shows that this line owns sufficient property and that its facilities, with the exception of its *station building*, are adequate to handle all of its passenger business safely, expeditiously, and economically.

By an agreement executed between Southern Pacific Railroad Company and Los Angeles & Salt Lake Railroad Company on the 18th day of July, 1917, Southern Pacific-Salt Lake Exhibit No. 1 (Tr. p. 573) provision is made for the joint use of the existing Southern Pacific station building at Los Angeles by the Los Angeles & Salt Lake Line, which would provide the Salt Lake Line with a modern, commodious and convenient station of sufficient capacity to handle its entire passenger traffic for more than twenty years to come.

The Southern Pacific and Salt Lake Lines made application (Tr. p. 31) to the California Commission for permission to jointly use and operate the existing Southern Pacific station, prior to the time the Interstate Commerce Commission had been vested, by the recent amendments to the Interstate Commerce Act, with exclusive jurisdiction to grant such applications. This application, which would have afforded the Salt Lake Line a modern, convenient and safe passenger station, was denied by the Commission.

The Commission's Orders Violate the Due Process Clause of the Constitution in Requiring the Santa Fe and Salt Lake Lines to Join in the Expense of Providing a Union Passenger Terminal in Order that the Grade Crossings on Alameda Street May Be Eliminated.

It has already been shown that both the Santa Fe and the Salt Lake Lines own sufficient property and that their facilities are adequate to handle all of their passenger business at Los Angeles safely, expeditiously, and economically, with the exception of the passenger station buildings themselves; that by the expenditure of comparatively small sums of money modern, convenient, safe and commodious station buildings may be provided by each of these lines.

The Commission's orders are predicated primarily upon the finding that a Union Passenger Station is necessary in order to eliminate grade crossings on *Alameda Street*. (Tr. p. 144.)

The uncontradicted evidence of the Commission's engineering experts shows that, with the exception of the grade crossings along Alameda Street, all other crossings can be eliminated without establishing a Union Station, and that such a station would not facilitate the elimination of any of the river crossings, but that the elimination of these crossings would be made in precisely the same manner whether a Union Station was or was not established.

The Commission's orders compel the Santa Fe and Salt Lake Lines to join in the expense of erecting and maintaining a Union Passenger Station at the cost of millions of dollars solely for the reason that the petitioner believes that this will be an easy and ready way to remove the Southern Pacific Company's trains from *Alameda Street*, over which the Santa Fe and Salt Lake Lines have no right to operate and never have and do not now operate any of their trains.

The Commission's orders are not supported by the finding that the existing passenger station *buildings* of the Santa Fe and Salt Lake lines are inadequate for the reason that the *uncontradicted* evidence shows that the passenger station facilities of these lines, with the exception of the buildings themselves, are fully adequate to meet the public requirements. Under these facts the California Commission only has the power to compel these carriers to erect suitable structures at their present sites.

Therefore, the necessary force and effect of the orders is to require the Santa Fe and Salt Lake Lines to incur an expense of millions of dollars so that their rival, the Southern Pacific Company, may eliminate grade crossings, exclusively used in the operation of its trains; and the Santa Fe and Salt Lake Companies are to that extent deprived of their property without due process of law, denied the

equal protection of the law, and their property is taken for public use without compensation, in contravention of and repugnant to provisions of the Constitution of the State of California and of the Fourteenth Amendment to the Constitution of the United States.

The Existing Passenger Terminal Facilities of the Southern Pacific Company Are Fully Adequate to Serve the Public Convenience and Necessity and to Safeguard the Interests of the Traveling Public and its Employees and the Commission's Orders, Requiring the Southern Pacific Company to Join in the Expense of Erecting a Union Passenger Terminal, Violate the Constitutional Rights of That Company.

It is significant that there is no finding, conclusion or order to the effect that the existing passenger facilities of the Southern Pacific Company, at Los Angeles, are in any wise inadequate or insufficient to promote the security, convenience, or necessity of the public. Such a finding or conclusion could not have been made or reached, for the reason that the *uncontradicted evidence* proves conclusively that the existing passenger terminal facilities of the Southern Pacific Company are modern, commodious, convenient, safe and adequate to accommodate all passenger trains, not only of the Southern Pacific Company but of the Salt Lake and Santa Fe companies as well for a period of at least the next twenty years. The passenger terminal of the South-

ern Pacific Company was, after formal hearing, constructed in 1915 under an express order of the Railroad Commission of the State of California, which was predicated upon the finding that "the structure to be erected under these plans will be efficient and ample to provide for the probable passenger traffic coming to and departing from a city several times the present size of Los Angeles." *In re Application Southern Pacific Company*, 3 C. R. C. 927, 929. (Order set forth in Appendix.)

The Commission's engineer testified in the present proceedings that: "The present station is well designed and is adequate and suitable for its purpose, * * * " that the "site is large enough for some time to come and is sufficient for 140 trains in the future, * * * being based on a twenty year esitmate." The evidence further shows without conflict that the present station facilities of Southern Pacific Company are modern, convenient and are adequate to provide for the convenience of the public for a period of twenty years, making allowances for all possible future "increase of traffic." (C. R. C. Exhibit No. 1, pp. 235, 337.)

Exhibits Nos. 8 (a) to 8 (i), inclusive, introduced by Southern Pacific and Salt Lake companies, are the drawings of the plans and specifications of the present station, showing the complete depot and track lay-out, size of rooms, elevations, etc., and bear out the testimony of the engi-

neers of the California Railroad Commission set forth in California Railroad Commission Exhibit No. 1, page 235, that "*the present station is well designed and is adequate and suitable for its purpose.*"

The Commission's engineers further testified that the existing Southern Pacific station, including the depot itself, and track lay-out, "is large enough for some time to come," and that "it is sufficient for 150 trains in the future * * * being based on a twenty year estimate." This evidence *given by the engineers of the California Railroad Commission* is not only uncontradicted but is fully corroborated by the testimony of the executive and operating officials of the carriers.

The testimony of Mr. T. H. Williams, Assistant General Manager Southern Pacific Company (Tr. 474-6), and Mr. W. H. Comstock, General Manager of the Los Angeles & Salt Lake Line (Tr. 485-9, and S. P. & S. L. Exhibits 29 and 30) is uncontradicted and supports the unqualified statement hereinbefore made that the existing passenger terminal facilities of Southern Pacific Company are fully adequate to meet the requirements not only of the Southern Pacific Company but of all the steam lines operating into Los Angeles at the present time and to provide facilities for any anticipated increase in traffic which may occur within the next twenty years.

"Among the principal advantages of the site of the present Southern Pacific station for a union terminal * * *" set forth by the commission's technical engineering experts at page 284 of California Railroad Commission's Exhibit No. 1, are:

> "It is possible to provide a union L. C. L. freight station at the Santa Fe site, which is the best site available for this purpose."
>
> "It is possible to segregate passengers and freight on different sides of the river."
>
> "It is convenient to business, hotel and shopping districts."
>
> "Use is made of present facilities, cost of which is already paid."
>
> "Elimination of all grade crossings on Seventh, San Pedro and Aliso Streets for through Pacific Electric trains is provided for."
>
> "Pacific Electric traffic south of Los Angeles is given access to the union station."
>
> "Loss of property values is small, if there is any."
>
> "Passengers are not obliged to pass through industrial district but are carried over it."
>
> "The Southern Pacific site has a number of advantages, of which possibly the most important is the fact that it makes use of existing facilities whose cost is already paid for. * * * Our estimate of the present market value of the land is approximately $1,310,348.00 and of all Southern Pacific holdings in this block, $2,101,128.00."

See also testimony of Mr. Shoup (Tr. pp. 490-534).

In the light of this *uncontradicted evidence* the Commission could not lawfully have made a finding to the effect that the passenger terminal facilities of the Southern Pacific Company at the City of Los Angeles are inadequate to serve the public convenience and necessity.

It, therefore, can not be held, under the uncontradicted evidence, that the entire passenger terminal facilities of the Southern Pacific Company are at all improper, inadequate or insufficient to promote the security, convenience, and necessity of the public. It must, therefore, be held that the Commission had no jurisdiction to render its decisions and make the orders complained of, and that the orders must be declared void and set aside.

Louisville & Nashville Railroad Co. v. I. C. C., 227 U. S. 88, 93;

Interstate Commerce Commission v. Northern Pacific Railway Company, 216 U. S. 538, 544.

The Supreme Court of the United States has definitely set this question at rest in the case of *O. R. & N. Co. v. Fairchild*, 224 U. S. 510, where it sustained the contentions of the carriers involved in that proceeding that the Railroad Commission of the State of Oregon had no jurisdiction, power, or authority to order an extension of facilities because the evidence did not show, and the Commission

could not therefore find as a jurisdictional prerequisite, that public convenience and necessity required that the extensions be made.

The Commission's Orders Requiring the Southern Pacific Company to Join in the Expense of Erecting and Operating a Union Terminal Depot Remote From Its Present Passenger Terminal Can Not Be Sustained, Upon the Ground That Its Existing Facilities Do Not Conform to the Commission's Plan For Eliminating Grade Crossings.

It must be borne in mind that all of the carriers have consistently conceded the necessity of eliminating grade crossings in the city of Los Angeles, the Santa Fe and Salt Lake lines, where they cross grades along the westerly and easterly banks of the Los Angeles River, and the Southern Pacific Company, where its main line traverses Alameda Street.

The court's attention is further directed to the fact that the evidence does not show that it is necessary to provide a unified passenger terminal in order to eliminate grade crossings.

The chief engineer of the California Railroad Commission testified that plans for the elimination of the so-called river crossings (in which the Salt Lake and Santa Fe lines are alone interested) may be eliminated irrespective of where a union depot may be located (Tran. 432). The fact, therefore, appears that these river grade crossings may be

eliminated under present conditions irrespective of whether a union passenger terminal is established (Tr. 451).

The *uncontradicted evidence* given by both the Commission's and carriers' engineers shows that all the grade crossings where the Santa Fe or Salt Lake lines are involved may be eliminated without establishing a union station. And, further, that all these grade crossings would receive the same treatment in the elimination thereof whether any union passenger station were established or not.

Complete grade eliminations along Alameda Street may also be accomplished without the necessity of establishing a union passenger station. The *uncontradicted evidence* of the carriers' engineers shows that the final and ultimate plan, outlined by the carriers, by the agreement attached to the application made by the Southern Pacific and Salt Lake lines, for permission to establish a union depot at the present site of the Southern Pacific station, filed prior to the adoption of the amendments of 1920, would reduce the number of grade crossing movements from 89 on the Salt Lake, 306 on the Santa Fe, 1408 on the Southern Pacific, and 22,950 on the Pacific Electric daily at the present time, or a total of 24,753, to absolutely zero (Tran. 329, 340). The 22,950 grade crossing movements made by Pacific Electric trains daily at the present time,

would not be eliminated, if the Commission's orders were carried into effect but would be entirely eliminated under the carriers' plans.

The Commission has made no finding and has reached no conclusion that a union passenger terminal is necessary in Los Angeles for any other purpose than to enable an order to be entered eliminating grade crossings; in fact, the Commission states, in its original order:

> "The principal arguments against the establishment of a union station are:
>
> "(1) Los Angeles is not a through station. Practically all trains entering the city terminate there, and it is there that the majority of the passengers reach their destination. Only approximately 15 per cent. of the total number of passengers transfer from one station to another.
>
> "(2) The first cost of any adequate union passenger terminal will be high and the saving in operating expenses will not alone warrant the resulting increase in fixed charges."

It may be remarked that the approximation of 15% of through passengers made by the Commission is the highest approximation made; the carriers' evidence showing that a careful check disclosed only twelve out of every ten thousand passengers would avail themselves of facilities afforded by a union station (Trans. 351).

It must be held that any finding made by the Commission that public convenience and necessity requires the erection of a union station at the city of Los Angeles is wholly unsupported by the evidence, and that the attempt of the Commission to justify its orders upon the grounds merely that the passenger station buildings of the Santa Fe and Salt Lake lines are inadequate to serve the public convenience and necessity, and that the existing depot of the Southern Pacific Company * * * does not conform to the plan for the elimination of said dangerous grade crossing * * * cannot avail.

The Supreme Court of the State of California, as has hereinbefore been suggested, said "there is no merit in this contention * * * that the establishment of a union terminal depot was an indispensable element in accomplishing the elimination of such grade crossings * * * and that * * * we can conceive of no indispensable relation between the elimination of grade crossings and the establishment of a union depot facilities" (Tr. 233).

This rule announced by the Supreme Court of the State of California, in construing the state statute, under the facts of this case, is, under the elementary rules and authorities, to which we have adverted, controlling upon this court.

Counsel for petitioners in their supplemental brief, page 18, cite the case of *Erie Railroad v.*

Board of Public Utility Commissioners, 254 U. S. 394, in support of the contention there made that the power of the state is supreme to protect the public in its use of streets, where such power conflicts with the operation of interstate carriers.

This case is not pertinent for the reason that the carriers are not resisting the elimination of grade crossings, and because, as above suggested, the Supreme Court of the State of California has expressly held in this case, construing the state statutes, that there is no indispensable relation between the elimination of grade crossings and the establishment of a union depot.

The Commission's orders are, therefore, shown to be repugnant to the provisions of the Fourteenth Amendment of the Constitution of the United States and must be held to be void.

THE DECISIONS AND ORDERS COMPLAINED OF TAKE THE PROPERTY OF RESPONDENTS FOR PUBLIC USE WITHOUT COMPENSATION AND DEPRIVE THEM OF THE PROPERTY WITHOUT DUE PROCESS OF LAW AND DENY RESPONDENTS THE EQUAL PROTECTION OF THE LAW IN CONTRAVENTION OF THE PROVISIONS OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

We have already referred to the evidence introduced before the Commission by both the engineers of the California Railroad Commission and the executive, operating and engineering officials of the carriers relating to the adequacy of the passenger terminal facilities of the three steam lines involved in the order.

The Commission's decisions and orders require the carriers to abandon large areas of terminal land acquired for the express purpose of handling the traffic in the City of Los Angeles, to "destroy and scrap facilities" of a value of several millions of dollars, to permit the joint use of facilities by rival carriers, *but no provision is made in the decisions and orders for reimbursement to any of the petitioners for the inevitable losses which they will sustain by scrapping their facilities, devoting their lands and facilities to the partial use of their rivals or for the loss of property values which they will inevitably sustain.*

The question for immediate determination is whether the Commission may in the face of the *uncontradicted evidence* to which we have referred "subject the property devoted by its owners to a public use, to another public use, or to the same public use by its rivals * * *" without first making compensation for the loss of properties abandoned and scrapped, and for the use of such properties as may be jointly used by rival carriers.

Irrespective of the limitations placed upon the power granted to the Commission by the Public Utilities Act, especially section 41 thereof, which expressly provides that where after a hearing the Commission finds that public convenience and necessity requires the use by one public utility of the tracks or other equipment or any part thereof belonging to another public utility, the Commission shall provide "prior to such use a fair and just compensation for damages suffered," the Fourteenth Amendment to the Constitution of the United States guarantees to each of these petitioners the right to have compensation made to them before property or facilities owned by them are required to be scrapped, abandoned or devoted to the use of present and prospective rivals.

> *Pacific Telephone & Telegraph Co. v. Eshelman*, 166 Cal. 640, 662-3.

Likewise, the constitutional rights of a utility are impaired when under the facts of a case such as this, it is shown that the existing facilities of a utility are adequate to fully meet its statutory and common law obligations to the public and its employees, an order is entered requiring the utility to expend millions of dollars to provide a "monumental gateway" to satisfy the "civic pride * * * in a tourist center * * *."

O. R. & N. Co. v. Fairchild, 224 U. S. 510.

In considering "the desirability of a union passenger terminal" it is said at page 247 of the California Railroad Commission Exhibit No. 1, that:

> "A railroad passenger terminal is essentially a city matter; it is the main entrance to, and the main exit from, every important city. City pride and what might be called the advertising aspect of a fitting city entrance are, therefore, essential factors in the consideration of any important passenger terminal."

The Commission's experts supported the respondents' contention by reciting in their report immediately following the foregoing quoted paragraph that,

> "In not a single instance of monumental passenger terminal construction in recent years can it be said that the cost of the station, considered from the railroad operating viewpoint alone, is justifiable as a sustaining investment."

Mr. Sachse further testified that:

> "I did not say in my report, and I am not by any means of the opinion, never was and never will be that this thing (Union Passenger Terminal) is desirable if the city bears the cost * * *" (Trans. 436).

"I am still of the opinion" (expressed in C. R. C. Exhibit No. 1, at page 247), that: "In not a single instance of monumental passenger terminal construction in recent years can it be said that the cost of the station, considered from the railroad operating viewpoint alone, is justified as a sustaining investment" (Tr. 433).

During the course of the hearing the Commission plainly indicated that the carriers would be required to bear the entire cost of erecting this "monumental gateway" which, according to the revised estimate of the Engineering Conference, set forth in the table (Tr. 94) ranges from $25,396,633 to $45,092,104.

At page 454 of C. R. C. Exhibit No. 1, it is said:

> "*The establishment of a union passenger terminal as recommended by us will be serious in its effect on the Southern Pacific.* The site of the depot yard cutting across Alameda Street, as it does, isolates the present less-than-carload freight station, and the establishment of a coach yard at the site of the present

> Southern Pacific main freight yard will force the construction of a new yard. * * * The construction of a connecting track between the depot yard of the union passenger station and the proposed site of the coach yard will make it impossible to handle the cars in and out of the freight station and will necessitate moving the freight station elsewhere."

The Commission's expert testified that it was absolutely essential that this existing facility of the Southern Pacific Company be abandoned by that line in order that it might be used as a coach yard by all carriers entering and using the proposed Plaza union depot. Yet no *provision is made in the Commissions decisions and orders providing for compensation to be paid the Southern Pacific Company for the loss of this facility or for the joint use of this facility by its rivals.*

This statement is true with reference to the many facilities now owned and operated by respondents at their passenger terminals at Los Angeles. The Commission's decisions and orders provide for the abandonment of large areas of their terminals, the scrapping of facilities erected at a cost of millions of dollars and the joint use of portions of their remaining facilities by rival carriers, without any provision being made to compensate respondents for the direct losses which they will sustain, or for the amounts they are entitled to receive by virtue of their constitutional and statutory rights for per-

mitting rival lines to use their facilities. The Commission's decisions and orders, therefore, requiring the abandonment of these properties without making provision for compensation to respondents, and in requiring respondents to join in the expense of erecting another passenger station and additional terminal facilities in the City of Los Angeles, are unreasonable, arbitrary and unlawful because they transgress the constitutional provisions against taking private property for public use without compensation. The power sought to be exercised goes not merely to the regulation of respondents and their business but passes beyond proper regulation and amounts to a taking of the property of respondents and the orders are therefore referable not to the police power, but to the power of eminent domain.

Irrespective of public convenience or public necessity, there is no justification for the taking of respondents' property for the purposes proposed and depriving respondents of the use thereof without having first made provision for, and making payment to respondents of, adequate compensation.

Pac. Telephone & Telegraph Co. v. Eshelman, 166 Cal. 640, 662-3;

O. R. & N. Co. v. Fairchild, 224 U. S. 510.

In deciding the case of *Pacific Telephone & Telegraph Co. v. Eshelman*, supra (page 663), the California court held that there were certain fundamental principles which govern and that

> "The first of these is that this (police) power goes merely to the *regulation* of the public utility, and that when an order passes beyond proper regulation it amounts to a taking of the property and the order is then referable not to the police power but to the power of eminent domain * * *. Nor is it of consequence that the law or order be in terms and in form regulatory, if, in effect, it is a taking of property or a deprivation of the use of property within the meaning of the Constitution. No public convenience, no public necessity, however urgent, will justify such a taking."

The Court further held (page 664):

> "Another principle, quite as important and quite as fundamental, is that 'taking' of property within the meaning of the Constitution is not restricted to a mere change of physical possession, but includes a permanent or temporary deprivation of the owner of its use."

The court further announced the principle that the inferiority of service (although no such inference or assumption or conclusion can be reached under the facts of this case) actually rendered is not, of course, a justification for the taking of property and that "no necessity, however urgent, justifies a taking of property without compensation." (*Pac. Tel. & Tel. Co. v. Eshelman*, 166 Cal. 668-669.)

In the light of this decision and especially in view of the fact that the evidence before the Commission did not show or prove that the existing facilities of respondents are inadequate to fully serve the convenience of the public and to fully provide for the safety of the public and the employees of petitioners, it must be held that the Commission has not regularly pursued its authority and has exceeded its powers, that its orders are not properly referable to the police powers but to the powers of eminent domain and that in attempting to provide a "monumental gateway" possessing unusual "aesthetic possibilities" to satisfy the "civic pride" of this great "tourist city" the Commission has entered decisions and orders which are repugnant to and in contravention of the Fourteenth Amendment to the Constitution of the United States, and which deny respondents the equal protection of the law and deprive each of them of their property without due process of law and that the decisions and orders should be vacated, annulled and set aside.

The cases, by the courts of other states, cited by petitioners' counsel in opposition to this contention are easily distinguishable under the facts of those particular cases, and because of the different provisions found in the statutes of those states.

In the case of *Railroad Commission v. North Alabama Ry.*, cited at page 21 of petitioners' brief, as is shown by the excerpt, "the railroad may lose the

use of the old building or the use of the lot as a location for its passenger depot." Here the Southern Pacific Company will lose a depot, built under the order of the California Railroad Commission, and which the uncontradicted evidence shows, there being no finding to the contrary, is modern, convenient and adequate to serve the needs of the public.

The statute upon which the Commission rested its decision in the case of *Railroad Commission v. Ala. Gt. So. Ry. Co.*, reviewed by counsel in their brief, expressly repuired the railroad company to join in the use of union passenger stations. There is no such provision in the California law; in fact, "union depots are not mentioned therein."

The same observation may be made with reference to the cases of *State of Texas v. St. L. & So. W. Ry.* and *Dewey v. At. Coast Line Ry.*, cited upon page 22 of their brief.

The facts of the cases of *Gulf & S. F. Ry. Co. v. State*, and *Mayor, etc., of Worcester v. Norwich, etc., Ry.*, are essentially different from the facts in the case at bar.

Many state cases might be cited in opposition to those upon which counsel for petitioner relies, but we may rest content by referring the court to the case of *State ex rel. Wabash Ry. Co. v. Public Service Commission*, 271 Mo. Rep. 155, in which

it was held that where the evidence before the Commission does not tend to prove any defect or inadequacy in the present passenger depot, which cannot be corrected by repairs, improvement or enlargement, an order of the Commission, requiring the railroad company to erect a new depot in a new place, is unreasonable.

The Commission's Decisions and Orders Are in Contravention of and Repugnant to the Provisions of Section 10 of Article 1 of the Constitution of the United States by Reason of the Fact that These Decisions and Orders Will, if Made Effective, Impair the Contract Made Between the State of California and Southern Pacific Railroad Company, and the Contract Made and Entered Into Between the City of Los Angeles and Southern Pacific Railroad Company, Granting a Franchise Authorizing the Construction and Operation of Its Railroad on and Along Alameda Street in the City of Los Angeles.

The State of California has heretofore, as is shown by the record made before the Commission, entered into a contract with the Southern Pacific Railroad Company, the lessor of Southern Pacific Company, whereby it was granted the right to construct and operate its line of railroad from San Francisco to and through the City of Los Angeles, this line having heretofore been constructed and now being operated in the City of Los Angeles along Alameda Street and other streets.

This contract is evidenced by the grant made by the State of California to the Southern Pacific Company, the grant having heretofore been accepted by the Southern Pacific Railroad Company by filing its articles of incorporation and constructing its railroad commencing in the city and county of San Francisco, State of California, and running through the City of Los Angeles to San Pedro, and from, in and through the City of Los Angeles to the Colorado River, and other places in the State of California.

Likewise, the City of Los Angeles has, under the laws of the State of California and the charter of the City of Los Angeles, heretofore granted to Southern Pacific Railroad Company, the predecessor in interest of Southern Pacific Railroad Company, the lessor of Southern Pacific Company, by ordinance a franchise to construct, maintain and operate its railroad along Alameda Street in the City of Los Angeles, and the grant has been heretofore accepted by the Southern Pacific Railroad Company by constructing and operating, directly or through its lessee Southern Pacific Company, its railroad commencing in the City and County of San Francisco and running thence to and through the City of Los Angeles to the City of San Pedro, and from, in and through the City of Los Angeles to the Colorado River and other places in the State of California.

Paragraph 14 of the final order entered by the Commission (Tr. 150, 151) provides:

> "That upon the completion of the union passenger terminal, as required by this order, the defendant, Southern Pacific Company, shall discontinue the operation of trains on Alameda Street, between College Street and Fifteenth Street, inclusive, in the City of Los Angeles, except for the purpose of local freight switching, which may be carried on during limited hours to be hereafter fixed by supplemental order."

The order denies Southern Pacific Company and Southern Pacific Railroad Company the right to continue the operation of their trains along Alameda Street in the City of Los Angeles, except for the purpose of industrial switching, and if this order becomes effective the contract between the State of California and these petitioners and the contract between the City of Los Angeles and these petitioners, granting petitioners the franchises and right of operating its main line trains over this street, will be impaired and abrogated and these respondents will be deprived of these rights in violation of Section 10 of Article I of the Constitution of the United States and their property will be taken for public use without compensation, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

California State Telegraph Co. v. Alta Telegraph Co., 22 Cal. 398, 422-3;

New Orleans Water Works Co. v. Rivers, 115 U. S. 674;

Tammany Water Works v. N. O. Water Works, 120 U. S. 64, 67;

City of St. Louis v. W. U. Tel. Co., 63 Fed. 68, 70;

New York Electric Lines v. Empire City Subway, 235 U. S. 179, 192-3;

Russel v. Sebastian, 233, U. S. 195, 204;

Baltimore, etc. Co. v. Baltimore, 64 Fed. 153, 159-60;

Pacific Telephone & Telegraph Co. v. Eshelman, 166 Cal. 640.

The case of the *Denver & Rio Grande v. Denver*, 250 U. S. 242, cited by petitioner's counsel in opposition to this contention is not, as contended by counsel, "squarely in point."

In that case a carrier had merely been directed to abandon a small portion of a spur track; whereas in this case the Southern Pacific Company is required to abandon three miles of its main line used largely for the handling of interstate traffic.

CONCLUSION.

It is submitted that this court should only review the question actually decided by the State Court but that in the event the court concludes that it should review other questions than those decided by the State Court it should hold that the orders entered by the Railroad Commission of the State of California violate respondents' constitutional rights for the reasons, among others:

That there was no evidence before the Commission to sustain the finding that the passenger station facilities of respondents are inadequate or that the security or convenience of the public or respondent's employees necessitate such consolidation, abandonment or extension of facilities, or construction of such a union passenger terminal, but that, on the contrary, the *uncontradicted evidence* proves that the existing passenger terminal facilities of respondents at Los Angeles and the consolidation of facilities of the Southern Pacific Company and Salt Lake Line proposed by these respondents provide modern, commodious, adequate and safe facilities to accommodate all passenger traffic which may be carried by the respondents for at least the next twenty years.

That the decisions and orders complained of deprive respondents of their property without due process of law and take their property for public

use without compensation, in contravention of and repugnant to the provisions of the Fourteenth Amendment to the Constitution of the United States for the reason that no provision is made to pay to the respondents compensation for the loss of the facilities which must be necessarily abandoned, or for the use by their rivals of such facilities as may be required under the plan which the Commission orders the carriers to put into effect.

That the requirements of the orders compelling the Atchison, Topeka & Santa Fe and Los Angeles & Salt Lake lines to join in the expense of erecting and maintaining a union passenger terminal in order to effect the elimination of the grade crossings on Alameda Street over which these respondents have no right to operate and never have operated any of their trains deprive these respondents of their property without due process of law and deny them the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

That the requirements of the orders, compelling the Southern Pacific Company and Southern Pacific Railroad Company to join in the expense of erecting and maintaining a union passenger terminal for the reason that the existing depot of these respondents does not conform to the plan for the elimination of grade crossings in the City of Los

Angeles, will deprive these respondents of their property without due process of law and deprive them of the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

That likewise Southern Pacific Company and Southern Pacific Railroad Company will necessarily be deprived of valuable franchise rights and privileges by being compelled to discontinue the operation of trains along Alameda Street in the City of Los Angeles, and that the decisions and orders of the Commission are in these particulars in contravention of and repugnant to the provisions of Section 10 of Article I of the Constitution of the United States, and by reason of failure of the Commission to make provision for payment to Southern Pacific Company and Southern Pacific Railroad Company of compensation for the loss of these valuable franchise rights the Commission's decisions and orders are in contravention of and repugnant to the provisions of the Fourteenth Amendment of the Constitution of the United States.

It is further submitted that in reviewing the question decided by the Supreme Court of the State of California this court should hold:

That the laws of the State of California under which the Railroad Commission of that state proceeded are in contravention of and repugnant to the provisions of Section 8 of Article I of the Constitution of the United States for the reason that the sole and exclusive power to enter orders such as were entered by the California Commission has been vested in the Interstate Commerce Commission by the amendments made to the Interstate Commerce Act in 1920, and that these amendments have divested the California Commission of jurisdiction to render or enforce the decisions and orders of which complaint is made.

That the orders of the California Commission directly interfere with and burden interstate commerce in violation of the commerce clause of the Federal Constitution.

Finally, that the history of Congressional legislation enacted pursuant to the commerce clause of the Federal Constitution regulating the rights and practices of interstate carriers shows that the Congress, because of the growth and development of the national commerce, has found it necessary in "unequivocal language" to declare a natjonal railroad policy and has enacted amendments to the Interstate Commerce Act, covering every detail of the subject so completely and in such a manner as to manifest its intention to exercise its constitu-

tional authority "in order to maintain an adequate railroad service for the people of the United States."

The wisdom of this Congressional policy is forcefully exemplified in the instant case.

The mandate of the amended Federal statute requiring the Commission to establish and adjust rates of interstate carriers as a whole, or in groups or territories, so that such carriers *shall* earn a "net railway operating income, equal as nearly as may be, to a fair return upon the aggregate value of the railway property * * *," and Section 5 of the amended act requiring the Commission as soon as practicable to "prepare and adopt a plan for the consolidation of the railway properties of the continental United States into a limited number of systems" (which the Interstate Commerce Commission has under consideration at the present time), and the other provisions of the amended statute providing for the comprehensive regulation of interstate carriers, would be nullified and the Interstate Commerce Commission would be rendered impotent to discharge these duties in the event the forty-eight state commissions retained jurisdiction or were held to possess concurrent jurisdiction with the Interstate Commerce Commission to require interstate carriers to abandon facili-

ties, extend their lines, and consolidate their terminal facilities at the principal cities in the several states.

Unless it be held in conformity with the decisions of this court that the jurisdiction of the State Commission to order carriers "subject to the jurisdiction of the Interstate Commerce Commission" to extend and abandon their lines and consolidate their terminal facilities and operate such facilities jointly, has been subordinated to the jurisdiction of the Federal Commission the inevitable result would be not only financial ruin to the carriers but carriers would be unable financially to provide adequate facilities for properly handling the nation's traffic. It is apparent that the amendments to the Interstate Commerce Act were adopted because Congress in accordance with its consistent policy recognized the necessity for the essential unity of the physical, economical and financial questions relating to the business of the interstate carriers, and the necessity of protecting railroad credit not only by providing reasonable rates of return but also by the actual control of capital expenditures and the desirability of securing the advantages of the unified operation of railroads and the minimum loss by competition, with due regard to the cost of service and the financial ability of the carriers concerned, and has enlarged the powers

of the Commission by vesting the Commission with authority to order the joint use of terminals, the making of extensions, and the abandonment of the lines and facilities of interstate carriers so that the Commission may promptly discharge the Congressional mandate of consolidating existing railroads and of protecting interstate commerce from being unduly burdened by the action of state authorities.

Concurrent exercise of such power and jurisdiction by the Federal and state commissions would result in conflicting orders and would seriously, if not entirely, operate to nullify the Federal policy which the Interstate Commerce Commission is empowered and directed to carry into effect.

> "It is unnecessary to repeat what has frequently been said by this court with respect to the complete and paramount character of the power confided to Congress to regulate commerce among the several states. It is of the essence of this power that, where it exists, it dominates. Interstate trade was not left to be destroyed or impeded by the rivalries of local governments."
>
> *Houston E. & W. Texas R. Co. v. U. S.*, supra.

By undertaking to usurp the jurisdiction now vested exclusively in the Interstate Commerce Commission and by entering orders which directly bur-

den interstate commerce the Railroad Commission of California has entered orders repugnant to and in contravention of the provisions of Section 8 of Article I of the Constitution of the United States.

And it is respectfully submitted that the judgment of the Supreme Court of the State of California should be affirmed and the writs dismissed.

Respectfully submitted,

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WM. R. STANSBURY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1923.

No. 284.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,
Petitioner,

vs.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
(A CORPORATION), *Respondent.*

CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

REPLY BRIEF FOR PETITIONER.

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SCOPE OF REVIEW.

The Supreme Court of California in annulling the order of the California Railroad Commission in the matter here under review based its decision exclu-

sively on one proposition. That was the proposition that the authority to require respondents to build a new union depot had been vested in the Interstate Commerce Commission by the Transportation Act of 1920 and by virtue of said Act the California Commission had been divested of jurisdiction over the subject (Tr., p. 233). Of the many other questions submitted to it, including questions of fact, reasonableness of the order, sufficiency of evidence, due process of law, et cetera, the California Court made no mention although the entire record was before it.

In filing the Petition for the writ of certiorari in this Court petitioners submitted but one issue. That was the one issue decided by the Supreme Court of California above set forth. Accompanying this Petition a greatly diminished transcript of record was filed containing only the pleadings, orders, and decisions in the case and omitting all testimony and exhibits. Upon the granting of the writ by this Court, it was the intention of petitioner to confine itself to this one issue and to have filed as the return to the writ the same transcript which was filed with the Petition. Respondents, however, declined to stipulate to the filing of this transcript alone and requested that enough evidence be included in the record to enable this Court to pass on all matters presented to the State Court although not passed upon by that Court. Accordingly, at the express request of respondents the supplemental transcript containing a considerable part of the testimony was prepared and certain exhibits filed. Respondents now argue in their brief that this transcript ought not be considered and that the review should be confined to the one issue presented by petitioner (Res. Br., pp. 12-18).

Petitioner has never believed that upon a writ of certiorari to a state court, this Court would pass upon questions not determined by the State Court and have never argued that this should be done. Since respondents have now arrived at the same conclusion there is no dispute between the parties as to the scope of this review.

However, the supplemental record has been filed and sufficient evidence is before the court, so that if the court should determine that both parties are wrong in their conception of the law on this point, a decision on all points can be rendered.

THE TRUE ISSUE.

The true issue in the case is the issue created by the holding of the California Court that the authority to require respondents to build a Union depot has been vested in the Interstate Commission by the Transportation Act of 1920 and the California Commission thus deprived of this power. To determine this issue it is necessary to determine precisely what the order of the California Commission requires and also to just what extent Congress has vested new authority in the Interstate Commission.

THE ORDER OF THE CALIFORNIA COMMISSION.

It is agreed by all parties that the order requires the Railroads to

Procure new grounds for a Union Depot;

File Plans and Specifications for a Depot;

Construct a depot in accordance with these plans, and

Eliminate grade crossings.

It is insisted by respondents that in addition to the above the order requires the Railroads to make extensions and abandonments of their lines and make joint use of each other facilities. With this contention petitioner does not agree.

As pointed out in our former briefs the exact requirements of the order are shown by the map. The Southern Pacific Lines from the north and east pass directly through the area designated by the Commission for the Depot. The Santa Fe line borders the area along the whole of its Eastern side and the Salt Lake line does likewise, but is separated only by the Los Angeles River, less than 200 yards wide. The Southern Pacific Lines from the South must reach the proposed depot site by shifting the Alameda Street line down to the area along the river bed or by arranging for a joint use of tracks with one of the other carriers, a plan which the Southern Pacific has itself proposed and strenuously argued for, but which the State Commission has not ordered and which it is not claimed this Commission has jurisdiction to order.

The alleged abandonment of lines refers solely to the cessation of main line traffic upon Alameda Street. This, of course, is the very essence of the plan to eliminate the grade crossings. The Southern Pacific has itself proposed to eliminate the Alameda Street crossings by a similar cessation of traffic on that Street.

The final order of the Commission (which is the only order the State Court considered, the first order having been entirely superseded) required only such additions to, extensions of, improvements and changes in the existing railroad facilities "*as may be reasonably necessary and incidental to the use of the Union Passenger Station*" (Tr., p. 146).

No joint use of trackage was ordered and it is clear from the map that each railroad can reach the proposed depot on its own tracks, if it so desires.

That such an incidental re-arrangement of trackage and construction of approaches to the depot, constitute "extensions" and "abandonments" within the meaning of the Transportaion Act, was, of course, never admitted or conceded by petitioners' counsel, but has been at all times strenuously denied.

Upon the assumption (which we claim is erroneous) that the Commission has ordered extensions and abandonments and joint use of facilities, as those terms are used in the Act of Congress, respondents have devoted a large part of their brief to proving by a wealth of authority that Congress having legislated in this field the State Powers have been superseded. Upon these general propositions there is no dispute. The true issue as above stated is whether or not Congress, in adopting the act of 1920 has in fact legislated upon the matters covered by the final order of the California Commission here under review. To this question, we say the answer must be no.

To sustain our position on this issue, we have only to refer to the particular terms of the Act of 1920. In that Act there are certain sections which deal with extensions and abandonments of lines, joint use of facilities and with terminals. But in legislating upon these particular matters just how far has Congress gone in enlarging the powers of the Interstate Commission? We are not concerned with how far Congress could have gone or what would have been the result if Congress had attempted to occupy the entire field of regulation.

THE ENLARGED SCOPE OF THE INTERSTATE COMMERCE ACT.

Counsel for respondents place much stress upon the greatly enlarged powers of the Interstate Commission under the 1920 Act. They point out that a new National Policy has been declared and quote the statement of this Court in the Wisconsin case, that "The Act made a new departure." With these general propositions we are in entire accord. But we do not think they are determinative of the issue here. Respondents' argument seems to be that because the act has made a new departure, therefore the power of the States on these particular matters has been superseded. But Congress has not vested such broad sweeping powers in the Interstate Commission as to "involve general regulation of intrastate commerce" (*Railroad Commission* v. *C. B. & Q.*, 257 U. S., 563, 590). In vesting new powers in the Interstate Commission, at least as to all matters of the kind here at issue, Congress has been specific and definite. It is the position of petitioners that as to these sections of the Act which deal with extensions, abandonments, and terminals, the extent to which Congress has increased the power of the Interstate Commission as to these matters must be determined by analysis of the particular sections. Undoubtedly a consideration of the Act in its entirety and of the enlarged scope of the powers of the Interstate Commission is a valuable aid in construing those powers expressly created. R. R. C. Wis. v. C., B. & Q. R. R. (*Supra*), Akron C. & Y. R. R. Co. v. U. S., 43 Sup. Ct. Rep., 270 But it is not proper by such a consideration of the enlarged scope of the Act to import into the statute powers not expressly conferred or necessarily implied by any of its

specific provisions. This we submit is the fallacy of respondents' argument.

EXTENSIONS AND ABANDONMENTS.

Paragraph 18 of Section 1 of the Act of Congress provides in part

> "No carrier by railroad subject to this Act shall undertake the extension of its line of railroad or the construction of a new line of railroad or shall acquire or operate any line of railroad or extension thereof * * * unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity will require the construction or operation * * * of such additional or extended line of railroad, and no carrier by railroad shall abandon all or any portion of a line of railroad, or the operation thereof unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment."

The extensions referred to in this section are extensions constructed to render new service, i. e., service to a community or to persons who have either not been served at all or who are in need of additional service, and the abandonments refered to are abandonments of lines of railroad by which communities or persons are deprived of railroad service. Where a mere relocation of tracks is made, such as taking up one piece of a track and laying another in its stead a short distance away with no cessation or change of service, there is no extension or abandonment of a line of railroad within the meaning of the Act. The

Interstate Commerce Commission has so construed this section of the Act.

In application of *Philadelphia, Newton & N. Y. R. R.*, 67 I. C. C., 252, the Railroad Company asked for a certificate of public convenience and necessity to abandon a portion of its railroad in the city of Philadelphia and to construct a new line to take the place of the abandoned portion. The Commission said:

> The purpose of the proposed change is to permit the construction of a building at the corner of Second Street and Erie Avenue, and to enable the city of Philadelphia to vacate American Street betwen Erie Avenue and Pike Street, as well as Butler Street between Second Street and American Street. * * * So far as service to the public is concerned, the proposed change will have no effect whatever, the public being interested only to the extent that travel on the public streets will be facilitated by the readjustment.
>
> From the facts above stated, it is evident that the removal of the present tracks between Pike Street and Erie Avenue can not be said to constitute an abandonment of a line of railroad within the meaning of paragraph (18) of Section 1 of the Interstate Comerce Act, since the applicant's whole line will still be in service as before and will render exactly the same service in a new location. Nor do we think that the relocation of the line constitutes the construction of a new line of railroad or an extension of a line of railroad within the meaning of that paragraph. The project is purely a relocation of an existing line under circumstances involving no change in the service rendered by the applicant to the public.

To the same effect see application of Pearl River Valley R. R. Co., 67 I. C. C., 748.

It has been held by this court that if the meaning of a statute is doubtful, the decision of an administrative board charged with its execution is entitled to great weight.

Pennoyer v. *McConnaughy*, 140 U. S., 1, 24, 25.
New York, N. H. & H. R. Co. v. *Interstate Commerce Commission*, 200 U. S., 361.
T. & T. Ry. Co. v *Abilene*, 204 U. S., 426, 433.

On pages 56 and 57 of their brief respondents have cited seven decisions of the Interstate Commerce Commission as holding that that Commission has placed a practical construction upon paragraph 18 of Section 1 and "has asserted and exercised jurisdiction over these matters," referring to changes of trackage such as were ordered here.

We must respectfully protest that respondents' citations do not suport their text.

Examination of these cases shows that every one of them is in full harmony with the Interstate Commerce Commission's decision in the *Philadelphia, Newton & New York case* above quoted and fully supports the construction of paragraph 18, Section 1, for which we are contending.

For example, in the *Virginia Western Extension Case*, 72 I. C. C., 55 (cited in respondents' brief, page 57), the extension for which a certificate was sought was 3.6 miles in length and was to serve a territory *not served by any railroad*. The primary purpose of the extension was to develop 5000 acres of coal land.

In the *Chicago & Alton Railroad Extension Case*, 72 I. C. C., 1 (cited in respondents' brief, page 57), the proposed extension was 5.67 miles of new line. It was to serve new territory in which was a town of 694 peo-

ple *not served by any railroad.* It was also to furnish transportation for large apple and timber industries.

In the *Silverton Railway Abandonment Case*, 72 I. C. C., 13 (cited in respondents' brief, page 57), 15 miles of line was sought to be abandoned. This line was built to serve a mining territory and the mines had become practically exhausted. Abandoning the line left the territory without railroad service at all.

We are in full agreement that cases such as those cited by respondent come within the provisions of paragraph 18, section 1, and call for a certificate of public convenience and necessity.

But in the case at bar we have a rearrangement or relocation of tracks such as falls squarely within the decision of the Interstate Commerce Commission in the *Philadelphia, Newton & New York case, supra,* where it was said "the applicant's line will still be in service as before, and will render exactly the same service in a new location."

From the above construction it follows that in adopting paragraph 18, section 1, Congress has not occupied the field covered by the State Commission's order so far as any alleged extensions or abandonments or changes in trackage are concerned, and the order of the Commission as to these matters is within its power.

TERMINALS.

Paragraph 4, section 3, deals with terminals. In adopting this paragraph has Congress gone to the extent of depriving the States of all power to require carriers to construct new depots? Only a careful examination of this particular paragraph can answer this question. Such analysis was made on pages 24 to 26 of petitioner's first brief and it need not be re-

peated here. It is apparent from the section that Congress was dealing only with the use by one carrier of the existing terminal facilities of another. There is nothing in the section which refers to the acquisition of new property or the construction jointly of a new Union Depot on a new site. That Congress ought to have included the construction of new depots and the acquisition of new property, or that confusion may result because Congress did not see fit to do so is a matter for that body to consider and is beside the point here. And to attempt by implication to extend the language of paragraph 4 beyond its plain terms is clearly unwaranted. As said by this court in the Minnesota Rate cases:

> "The interblending of operations in the conduct of interstate and local business by interstate carriers is strongly pressed upon our attention. * * * The force of these contentions is emphasized in these cases, and in others of like nature, by the extreme difficulty and intricacy of the calculations which must be made in the effort to establish a segregation of intrastate business for the purpose of determining the return to which the carrier is properly entitled therefrom.
>
> "But these considerations are for the practical judgment of Congress in determining the extent of the regulation necessary under existing conditions of transportation to conserve and promote the interests of interstate commerce. * * * Nor, in the absence of Federal action, may we deny effect to the laws of the state enacted within the field which it is entitled to occupy until its authority is limited through the exertion by Congress of its paramount constitutional power" 230 U. S., 351, 432, 433.

But, if there is any doubt that the terms of paragraph 4 cover only the use of existing terminal facilities and do not go to the acquisition of new property and the construction of new depots, it is only necessary to refer to the legislative history of the act, which shows that an amendment which would have given the Interstate Commission the very power now claimed for it by respondents, was voted down and that Chairman Esch of the Committee having the bill in charge stated that the matter was to be left within the jurisdiction of the State Commissions (Pet. 1st Br., pp. 30 to 32).

That this court will in proper cases refer to committee reports and statements of the chairman of a committee having a bill in charge, was held in the *Shreveport case*, 234 U. S., 342, 356, and also in *Akron, C. & Y. Ry. Co.* v. *United States*, 43 Supreme Court Reporter, 270, 274. In the latter case statements of Chairman Esch relative to the Act here being considered were cited by the court.

As already pointed out and as reference to the map clearly shows, it is not necessary, in order to carry out the Commision's order for the cariers to do more than merely rearrange their tracks. There will be no extensions, no abandonments, no joint use of tracks or "physical connections" (unless they themselves desire it), no interchange of traffic, no use by one carrier of the terminal facilities of another. It follows that the order of the Commission can be carried out without infringing in any particular upon the enlarged power of the Interstate Commission.

This being so, it is unnecessary to consider the arguments of respondents relative to the undisputed power of Congress to legislate on the subject of interstate commerce.

"It has repeatedly been declared by this court that as to those subjects which require a general system or uniformity of regulation, the power of Congress is exclusive. In other matters, admitting of diversity of treatment according to the special requirements of local conditions the states may act within their respective jurisdictions until Congress sees fit to act; and, when Congress does act, the exercise of its authority overrides all conflicting state legislation."

Cooley v. Port Wardens, 12 How. 299, 319, 13 L. ed. 996, 1004; Ex parte McNiel, 13 Wall. 236, 240, 20 L. ed. 624, 625; Welton v. Missouri, 91 U. S. 275, 280, 23 L. ed. 347, 349; Mobile County v. Kimball, 102 U. S., 691, 697, 26 L. ed. 238, 239; Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 196, 204, 29 L. ed. 158, 162, 1 Inters. Com. Rep. 382, 5 Sup. Ct. Rep. 826; Bowman v. Chicago & N. W. R. Co., 125 U. S. 465, 481, 485, 31 L. ed. 700, 705, 707, 1 Inters. Com. Rep. 823, 8 Sup. Ct. Rep. 689, 1062; Gulf, C. & S. F. R. Co. v. Hefley, 158 U. S. 103, 104, 39 L. ed. 912, 913, 15 Sup. Ct. Rep. 802; Northern P. R. Co. v. Washington, 222 U. S. 370, 378, 56 L. ed. 237, 239, 32 Sup. Ct. Rep. 160; Southern R. Co. v. Reid, 222 U. S. 424, 436, 56 L. ed. 257, 260, 32 Sup. Ct. Rep. 140."

Minnesota Rate Cases, 230 U. S., 351, 399, 400.

"Further, it is competent for a state to govern its internal commerce, to provide local improvements, to create and regulate local facilities, to adopt protective measures of a reasonable character in the interest of the health, safety, morals, and welfare of the people, although interstate commerce may incidentally or indirectly be involved."

Id., p. 402.

STATE COMMISSION'S ORDER DOES NOT SUPPLEMENT FEDERAL REQUIREMENTS.

Two other matters require some discussion. In petitioner's brief in support of the petition (p. 29) it was suggested that if it were necessary to issue securities to carry out the Commission's order, application therefor could be made by the carriers to the Interstate Commission for permission. Respondents claim that by this suggestion petitioners are proposing that the states "supplement" the requirements of the Federal statutes, and cite many cases to show that such concurrent jurisdiction is not recognized. Again we agree with respondents' argument upon the fundamental proposition. The state can no more supplement the requirements of a Federal statute, than it can annul them. But this was not what petitioners suggested.

If, in order to comply with a lawful state order, the railroads find it desirable to issue securities, or if in order to reach the proposed depot, respondents prefer to use certain trackage jointly, rather than to come in, each over its own tracks, then respondents can ask the Interstate Commission for permission to do these things. But these things are not ordered by the State Commission. The Commission's order stands alone and does not supplement any Federal requirements, or necessarily involve the exercise of any concurrent jurisdiction, but simply directs certain things to be done, all of which are exclusively in the power of the State to require and not prohibited by any provisions of the Act of 1920.

The possibility that the Interstate Commission may be called upon to grant permission to the railroads to do certain things to facilitate compliance with the State

Commission's order is not an attempt by the State Commission to supplement the requirements of a Federal statute. On the contrary, it would be calling upon the Federal body to supplement the requirements of a state commission's order and would be entirely in harmony with the spirit and meaning of the Interstate Commerce Act. Sec. 13, Par. 3.

PROVISO OF PARAGRAPH 17, SECTION 1.

There has been considerable discussion in the briefs as to the effect of the proviso at the close of paragraph 17, section 1, which in plain terms says that nothing in the Act shall impair the right of a State in the exercise of its police power to require just and reasonable freight and passenger service for intrastate business, except in so far as such requirement is inconsistent with any lawful order of the Interstate Commission made under the provisions of the Act.

We have already stated our contention that the Act does not impair the power of the State to make the order which the California Commission made. It is also clear that the Act has in no way deprived the States of their power over intrastate commerce or vested the Interstate Commission with any power of "general regulation of intrastate commerce." *Railroad Commission of Wisconsin* v. *C. B. & Q. Ry.*, 257 U. S. 563, 590. And, of course, regardless of this proviso Congress could not and has not endeavored to encroach upon the constitutional powers of the States reserved to them by the 10th Amendment to the Constitution.

The purpose of the proviso was undoubtedly to declare what was said by Congressman Esch, that the Act had not, and should not be construed as having

deprived the States of matters lying within their police power including the matter of depots. To this extent we agree with respondents that the proviso did no more than declare what is apparent from reading the Act and what is existing law regardless of the proviso.

But the proviso also says that the State's requirement shall not be impaired except when "such requirement is inconsistent with a *lawful order* of the (Interstate) Commission." (Italics ours.)

This portion of the proviso is an apparent recognition of certain well established principles.

The power of Congress to regulate interstate commerce is supreme and exclusive, but remains dormant until actually exercised. The power to regulate intrastate commerce is left exclusively in the States and in the exercise of that power the State may, so long as the Federal power remains dormant, indirectly affect interstate commerce. As soon as the Federal power is exercised, then all State regulations which conflict with it, even though intended to operate exclusively on intrastate commerce, must yield to the paramount power of the Nation.

In the case at bar, as we have shown, Congress has not vested powers in the Interstate Commission which give it authority over the matters contained in the California Commission's order. The Federal power as to these matters remains dormant. But Congress has given the Interstate Commission vastly enlarged powers. If in the exercise of these powers the Interstate Commission should make a "*lawful order*" affecting interstate commerce and that order conflicted with any requirement made by a State in the exercise of its police power to require reasonable intrastate service, such "lawful order" of the Federal Commis-

sion would be paramount to the State requirement. To quote again from the Minnesota State case:

> "Within the State power, then, in the words of Chief Justice Marshall, is 'that immense mass of legislation which embraces everything within the territory of a State, not surrendered to the general government; all which can be most advantageously exercised by the States themselves. * * * If the legislative power of the Union can reach them, it must be for national purposes; it must be where the power is expressly given for a special purpose, or is clearly incidental to some power which is expressly given.' Gibbons v. Ogden, 9 Wheat. 203, 204, 6 L. Ed. 71, 72.
>
> "And whenever, as to such matters, under these established principles, Congress may be entitled to act, by virtue of its power to secure the complete government of interstate commerce, the State power nevertheless continues until Congress does act and by its valid interposition limits the exercise of the local authority." 230 U. S. 351, 411, 412.

The order of the California Commission is made under the police power of the States to require good service for intrastate business. The fact that it may indirectly affect interstate commerce is of no consequence so long as the Interstate Commission in the exercise of its powers over interstate commerce makes no lawful order that stands in the way of the State's requirements. The Interstate Commission has made no such order in this case.

Respondents in their brief have attempted to show that the Interstate Commission has "actually taken action" by referring to the fact that the city of Los Angeles filed a petition with the Interstate Commission

invoking its powers to order the same relief that was granted by the order of the California Commission and that hearings have been had on that complaint. Respondents omitted to state that at the conclusion of this hearing Commissioner Aitchison said:

> Commissioner Aitchison: By stipulation the Commission will depart from its usual rule as to fixation of time for filing of briefs, and will give the matter consideration after the *certiorari* case of the Supreme Court has been disposed of, and the case will rest in abeyance until then. Is that satisfactory to all concerned?

To this proposal counsel for respondents agreed and the hearings adjourned.

It thus appears that instead of having "actually taken action" the Interstate Commission has expressly declined to take action and will make no "lawful order" either consistent or inconsistent with the order of the California Commission until after this court has rendered its decision in the case at bar.

In the absence of any inconsistent order by the Interstate Commission we submit that the validity of the order of the California Commission is fully preserved by the proviso of paragraph 17, section 1.

On the construction of this proviso we respectfully direct the court's attention to the case of *Chicago, R. I. & P. Co. ex Stats*, 217 Pac. 147. In this case the Oklahoma Supreme Court sustained an order of the Oklahoma Corporation Commission which was almost identical with the order of the California Commission here under review. A union station was ordered at a new site, grade crossings were ordered eliminated and the carriers were ordered to file plans and specifications. All the objections that are being made here

were presented to the Oklahoma court and the court held in no uncertain terms that the Act of 1920, had not taken away the state's power to make such an order. It was held that the proviso of paragraph 17, section 1, covered depot facilities and fully preserved the state's power over them.

As to the contention which is made so insistently here that the order placed an unlawful burden on interstate commerce, the court said:

> "The question of whether the construction of this depot will place an unusual burden on the company, so as to cripple its operation upon interstate or foreign commerce, cannot be determined until after plans and specifications are made and approved and the distribution of the costs made."

The situation is identical with that presented by the case at bar. Plans have not yet been filed by the carriers as required by the California Commission's order and it is impossible for any one to say whether the cost of complying with that order will place an unusual burden upon the carriers.

Finally, we desire to point out that the absence of any "lawful order" of the Interstate Commission which is inconsistent with the requirements of the State's order is one of the important points which distinguish this case from the *Wisconsin Rate Case* and the *Shreveport Case*.

In the *Wisconsin Rate Case* "The Interstate Commission *had found* there was an undue, unreasonable, and unjust discrimination in Wisconsin against interstate passengers and against interstae commerce as a whole." The same condition existed in the *Shreveport Case*. In both cases the rates fixed by the State

had been found by the Federal Commission to constitute an unlawful burden on interstate commerce.

No such condition exists here. The Interstate Commission has made no such finding. The case, therefore, falls within the rule of the *Minnesota Rate Cases*, i.e., that the order of the State is valid in the absence of contrary action by the Federal power. This rule was reaffirmed by this Court in the Shreveport case in the following terms:

> "Undoubtedly—in the absence of a finding by the Commission of unjust discrimination—intrastate rates were left to be fixed by the carrier, and subject to the authority of the States, or of the agencies created by the States. This was the question recently decided by this court in the Minnesota Rate Cases."

Quoting from the latter case this Court said:

> "* * * The question whether the carrier, in such a case, was giving an undue or unreasonable preference or advantage to one locality as against another, or subjecting any locality to an undue or unreasonable prejudice or disadvantage, would be primarily for the investigation and determination of the Interstate Commerce Commission, and not for the courts." 234 U. S. 341, 357, 358.

We respectfully submit that the decision of the California Supreme Court annulling the order of the California Railroad Commission was erroneous and should be reversed.

Respectfully submitted,

HUGH GORDON,
WILLIAM W. CLARY,
Attorneys for Petitioners.

OCT 22 1923
WM. R. STANSB

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1923

No. 285

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,
Petitioner,

vs.

LOS ANGELES AND SALT LAKE RAILROAD COMPANY
(a corporation),
Respondent.

CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

BRIEF FOR PETITIONER.

HUGH GORDON
WILLIAM W. CLARY,
Attorneys for Petitioner.

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In the Supreme Court
OF THE
United States

October Term, 1923

No. 285

Railroad Commission of the State of California,
Petitioner,

vs.

Los Angeles and Salt Lake Railroad Company
(a corporation),
Respondent.

CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

BRIEF FOR PETITIONER.

There is involved in these proceedings the question of the validity of an order of the Railroad Commission of California directing three railroads (the Southern Pa-

cific, the Santa Fe and the Salt Lake) to join in the erection of a new union passenger depot and the elimination of certain grade crossings in the City of Los Angeles.

The facts in the case, together with a map showing the location of the three railroads in Los Angeles, the area within which a union depot was ordered to be erected, and also the location of the grade crossings proposed to be eliminated, are set forth in the petition for writ of certiorari and brief in support thereof on file in these proceedings. It is deemed unnecessary, therefore, to repeat at length the facts and circumstances out of which the case arose.

I.

THE PRIMARY ISSUE OF JURISDICTION.

The Railroad Commission based its order upon specific findings that public convenience and necessity requiring the erection of a union depot both as a means for more adequate railroad facilities and as a measure essential to the elimination of certain dangerous grade crossings. The Supreme Court of California, in a judicial review of the Commission's order, concluded that complete jurisdiction to determine the necessity for the erection of new railroad facilities was vested in the Interstate Commerce Commission by the provisions of the Transportation Act of 1920, and that the power of the Railroad Commission under the laws of California to make the order in question had been superseded by this assump-

tion of broader jurisdiction by the Interstate Commerce Commission.

The state court based this decision upon section 15a, section 5, section 1, subdivisions 18 to 22, inclusive, and section 3 of the Interstate Commerce Act as amended in 1920, holding that these particular sections had deprived the State Commission of the power it previously had to make the order under review. Each of these sections of the act is discussed and a complete argument on the question of jurisdiction is presented in petitioner's brief in support of the petition for writ of certiorari herein. An extended reargument upon this phase of the case is deemed unnecessary here.

Supplementing the points already presented and in order to show more clearly that the Commission's order did not contravene any of the sections of the Interstate Commerce Act relied upon by the state court, we desire to set forth in summary form an exact statement of what the order of the Railroad Commission does and does not do.

What the Commission's order requires:

1. The procurement jointly by the three carriers of grounds for a union depot within the area specified.

2. The filing of plans and specifications jointly by the three carriers for the construction of an adequate union passenger depot. (Provisions were made in the order as to apportionment of cost and time of construction.)

3. The actual construction of the depot in accordance with such plans.

4. The elimination of 17 specified grade crossings on the Southern Pacific line by the cessation of train operations longitudinally at grade along and upon a certain street (Alameda Street).

5. The elimination of 6 specified grade crossings on the Santa Fe and Salt Lake lines by the construction of viaducts.

The order does not require:

1. The construction or extension of any line of railroad.

2. The abandonment of any line of railroad.

3. The use by one railroad of the terminal facilities or main line and other trackage of another railroad.

4. The formulation of a plan for consolidated railroad systems.

5. The acquisition of facilities for the interchange of traffic.

6. The emergency utilization of cars or of terminal properties.

7. The regulation of car service.

The Commission's order is set forth in full on pages 146 to 150, inclusive of the transcript of record.

We respectfully submit that the Supreme Court of California erred in its interpretation of the Commission's order, and also, in the application and construction of the provisions of the Interstate Commerce Act.

II.

POINTS RAISED BY THE SUPPLEMENTAL RECORD.

It was originally intended that the issue of jurisdiction presented by the petition for certiorari and the transcript of record filed therewith should be the sole issue submitted in these proceedings. Attention has later been directed to certain decisions of this honorable court which have led counsel to conclude that it was proper to submit a supplemental stipulated record containing so much of the transcript of evidence presented to the court below as might be necessary for a complete consideration by the Supreme Court of all points in the case, involving the alleged denial of rights under the Federal Constitution even though these points were not passed upon by the court below.

Southern Railway Co. et al. v. Watts, 260 U. S. 192, 193;

Atlantic Coast Line R. Co. v. Daughton, (decided June 4, 1923) U. S. Supt. Ct. Adv. Op. 67 L. ed. No. 17, p. 681.

Greene v. Louisville & Interurban R. Co., 244 U. S. 499.

Appleby v. Buffalo, 221 U. S. 524, 529.

There has, therefore, been filed a supplemental record, consisting of selected portions of the transcript of testimony and certain important exhibits which counsel have stipulated shall constitute the entire record on review.

The following questions arising from facts set forth in this supplemental record were presented to the state court:

1. Was the Commission's finding that public convenience and necessity require the erection of a union depot consistent with, and supported by, the evidence?

2. Were the Commission's findings on questions of public convenience and necessity final and conclusive under the California law?

3. Has the Commission, under the police power of the state, authority to order the railroads to erect a union depot as an essential measure for the elimination of dangerous grade crossings?

4. Does the Commission's order, in requiring the construction and use of the new union depot and the abandonment of the present facilities deprive the railroads of property in violation of the guarantees under the Federal Constitution?

5. Does the Commission's requirement that the operation of trains on Alameda Street be eliminated after the construction of the union depot, impair the obligation of a contract contained in a certain franchise permitting the railroads to operate trains on Alameda Street?

6. Is the Commission's order invalid because it may require the railroads to expend large sums of money and to exercise the power of eminent domain in acquiring the necessary land and constructing a union depot?

These questions were not passed upon by the Supreme Court of California, the court holding that "this disposition of the primary inquiry" (the Federal question of jurisdiction) "renders unnecessary a discussion of the several subsidiary questions presented for our consideration by the briefs of counsel herein." Assuming that it

is proper to present for consideration all of the issues involved in the proceedings under review, we respectfully submit herewith the following argument upon these questions.

1. Was the Commission's finding that public convenience and necessity require the operation of a union depot consistent with, and supported by, the evidence?

The Commission's order was based upon four specific findings of fact:

(a) The Commission found that existing grade crossings (naming them) are unsafe, and that the continued use of these crossings, by the movement of trains by the respective carriers using such crossings, endangers the employees of the carriers and the public generally, and that public interest, safety, convenience and necessity require that such dangerous conditions be eliminated.

Included in the crossings enumerated by this finding are the 17 crossings of the Southern Pacific line on Alameda Street. The correctness of this finding of fact has never been disputed.

(b) The Commission found that the existing passenger station of the Santa Fe and Salt Lake railroads "are improper, inadequate and insufficient", and that the existing depot of the Southern Pacific Company "does not conform to the plan for the elimination of dangerous railroad crossings in the City of Los Angeles."

(c) The Commission found that in order to eliminate the dangerous grade crossings enumerated and to provide adequate and sufficient passenger station facilities for the three railroads in question "it is necessary and

the public safety, convenience and necessity require that a new structure or structures, to-wit: a union passenger station and buildings incidental thereto, be erected" by the respondent railroads, and that in connection therewith such improvements and changes in existing facilities of said railroads be made as might be reasonably necessary and incidental to the use of the union passenger station "and that all railroad traffic be eliminated from Alameda Street, between College Street and 15th Street, inclusive, in the City of Los Angeles, except local freight switching".

(d) The Commission found that public safety, convenience and necessity require that the location and site of the union passenger station referred to in the foregoing findings be within a designated area approximately one-half mile square within the City of Los Angeles.

This area is traversed by the main lines of two of the carriers, and is separated from the main line of the third carrier by a dry river bed less than 200 yards wide.

As shown by the supplemental transcript of record on file herein, the Commission's hearings and investigations preceding its findings involved a period of some four years. At its numerous hearings, in which many days' time was consumed, and printed transcripts of testimony of approximately 3000 pages compiled, the Commission heard evidence upon all questions involved in the above findings. In addition to the final report compiled by the

Commission's engineering department (Commission's Exhibit No. 1 filed herein with the supplemental record), plans were compiled and submitted by four engineers of prominence and unquestioned standing. These engineers also testified at the hearings, and excerpts from their testimony are contained in the supplemental transcript of record filed herein.

The questions involved in the above findings were largely questions requiring expert opinion. Four engineers, including the chief engineer of the Railroad Commission, testified definitely that a union depot was essential both for the proper elimination of grade crossings and for the convenience of the traveling public; that continued use of the present Southern Pacific depot was inconsistent with an adequate plan for the elimination of grade crossings; that the Santa Fe and Salt Lake depots were both inadequate and inconveniently located, and that the site of the union depot should be at or near the place finally selected and designated by the Commission. These engineers were Mr. Hawgood, Mr. Storrow, Mr. Barnard and the chief engineer of the Railroad Commission, Mr. Sachse. Mr. Hawgood's testimony will be found beginning on pages 316 and 353; Mr. Storrow's on pages 258 and 543; Mr. Barnard's on page 340, and Mr. Sachse's on pages 423 and 534 of the supplemental transcript of record. Also, the summary of this testimony and the various plans proposed are set forth in the report of the Commission's Engineering Department (Commission's Exhibit No. 1).

In addition to the evidence just referred to, the Commission made a complete inspection of the premises in

the presence of all of the parties and under the guidance of some of the engineers (including the respondents' engineers), who appeared as witnesses. The record of this inspection is also set forth in the supplemental transcript of record, beginning page 573. Such a view of the premises alone was sufficient to support the Commission's finding.

Boesche v. City of Naperville, (Ill.) 48 N. E. 1061;

Trustees of Schools of Lake Co. v. Griffith, 105 N. E. 760;

City of Tacoma v. Hansen, 110 Pac. 426;

Lewis Em. Dom., Vol. II, Sec. 776.

The necessity for the elimination of train operations on Alameda Street was recognized by the Southern Pacific and Salt Lake railroads, whose application for the establishment of a union depot at the present site of the Southern Pacific station was heard in connection with the proceedings resulting in the Commission's order. (Application No. 3346, Transcript of Record, p. 31, Supplemental Transcript, Appendix 544-572.) These two railroads urged the acceptance of their plan for the union depot instead of that finally adopted by the Commission. It was rejected, however, not only because it did not include the Santa Fe, but also because it afforded only a partial solution of the difficulties sought to be eliminated.

We respectfully submit that the supplemental record filed herein shows that the Commission's findings of fact, in all respects, were not inconsistent with, but on the contrary, were fully supported by, the evidence.

2. Were the Commission's findings on questions of public convenience and necessity final and conclusive under the California law?

The provision under the laws of California for judicial review of the Commission's orders is contained in California Statutes, 1915, Chapter 91 (The Public Utilities Act), section 67 of which reads as follows:

> "67. Within thirty days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the rendition of the decision on rehearing, the applicant may apply to the Supreme Court of his state for a writ of certiorari or review (hereinafter referred to as a writ of review) for the purpose of having the lawfulness of the original order or decision or the order or decision on rehearing inquired into and determined. Such writ shall be made returnable not later than thirty days after the date of the issuance thereof, and shall direct the commission to certify its record in the case to the court. On the return day, the cause shall be heard by the Supreme Court, unless for a good reason shown the same be continued. No new or additional evidence may be introduced in the Supreme Court, but the cause shall be heard on the record of the commission as certified to by it. The review shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the Constitution of the United States or of the State of California. The findings and conclusions of the commission on questions of fact shall be final and shall not be subject to review; such questions of fact shall include ultimate facts and the findings and conclusions of the commission on reasonableness and discrimination. The commission and each party to the action or proceeding before the commission shall have the right

> to appear in the review proceeding. Upon the hearing, the Supreme Court shall enter judgment either affirming or setting aside the order or decision of the commission. The provisions of the Code of Civil Procedure of this State relating to writs of review shall, so far as applicable and not in conflict with the provisions of this act, apply to proceedings instituted in the Supreme Court under the provisions of this section. No court of this state (except the Supreme Court to the extent herein specified) shall have jurisdiction to review, reverse, correct or annul any order or decisioin of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere with the commission in the performance of its official duties; *provided*, that the writ of mandamus shall lie from the Supreme Court to the commission in all proper cases."

It is to be noted that the above statute specifically provides that "the findings and conclusions of the Commission on questions of fact shall be final and not subject to review". In numerous decisions rendered both before and after the decision in the cases under review, the Supreme Court of California has recognized the force and validity of this provision as to the conclusiveness of the Commission's findings.

In the case of *Oro Electric Corp'n. v. Railroad Commission*, 169 Cal. 466, the California Supreme Court affirmed an order of the Railroad Commission denying the Oro Electric Corporation a certificate of public convenience and necessity to construct certain electric lines. Discussing the question of the Commission's finding of fact, and citing section 67 of the Public Utilities Act, the court said:

"Here the Commission found the ultimate fact that the public convenience and necessity did not require the exercise of the privileges in controversy, and neither the sufficiency of the evidence, nor the soundness of the reasoning, upon which that finding was based, can be considered in this proceeding."

Similar rulings were made in the following cases:

Clemmons v. Railroad Commission, 173 Cal. 254, 258;

Scrton v. Atchison, Topeka & Santa Fe Ry. Co., 173 Cal. 760;

San Leandro v. Railroad Commission, 183 Cal. 229, 239.

In the recent case of *Live Oak Water Users Assn. v. Railroad Commission*, Vol. 66 Cal. Dec. (Advance sheets) p. 408 (decided September 21, 1923), the Supreme Court of California again upheld the validity of section 67 of the Public Utilities Act, quoting in italics that portion of the statute, which provides that:

"The findings and conclusions of the Commission on questions of fact shall be final and shall not be subject to review."

In this case the California court supported its construction of section 67 of the Public Utilities Act by a reference to the decision of this honorable court and a quotation therefrom in the case of *Penn. R. R. Co. v. International Coal Mining Co.*, 230 U. S. 184, as follows:

" 'Under the statute there are many acts of the carrier which are lawful or unlawful according as

> they are reasonable or unreasonable, just or unjust. The determination of such issues involves a comparison of rates with service, and calls for an exercise of the discretion of the administrative and rate-regulating body. For the reasonableness of rates, and the permissible discrimination based upon difference in conditions are not matters of law. So far as the determination depends upon facts, no jurisdiction to pass upon the administrative questions involved has been conferred upon the courts. That power has been vested in a single body, so as to secure uniformity and to prevent the varying and sometimes conflicting results that would flow from the different views of the same facts that might be taken by different tribunals.'"

It thus appears that section 67 and the decisions of the California Supreme Court construing it are consistent with the principles enunciated by this honorable court in the case of *New York & Queens Gas Co. v. McCall*, 245 U. S. 345, 347, 351,

> "The court of appeals of New York decided that the Public Service Commission was created to perform the important function of supervising and regulating the business of public service corporations; that the state law assumes that the experience of the members of the Commission especially fits them for dealing with the problems presented by the duties and activities of such corporations; that the courts, in reviewing the action of the Commission, have no authority to substitute their judgment as to what is reasonable in a given case for that of the Commission, but are limited to determining whether the action complained of was capricious or arbitrary and for this reason unlawful; and that it was clearly within the power of the Commission to make the order which is here assailed.

"This interpretation of the statutes of New York is conclusive, and the definition, thus announced, of the power of the courts of that state to review the decision of the Public Service Commission, based as it is in part on the decision in Interstate Commerce Commission v. Illinois C. R. Co., 215 U. S. 452, 470, 54 L. ed. 280, 287, 30 Sup. Ct. Rep. 155, differs but slightly, if at all, from the definition by this court of its own power to review the decisions of similar administrative bodies, arrived at in many cases in which such decisions have been under examination. Typical cases are: Baltimore & O. R. Co. v. United States, 215 U. S. 481-494, 54 L. ed. 292-297, 30 Sup. Ct. Rep. 164; Kansas City Southern R. Co. v. United States, 231 U. S. 423, 443, 444, 58 L. ed. 296, 304, 305, 52 L. R. A. (N. S.) 1, 34 Sup. Ct. Rep. 125; Railroad Commission v. Cumberland Teleph. & Teleg. Co., 212 U. S. 414, 420, 422, 53 L. ed. 577, 580, 581, 29 Sup. Ct. Rep. 357; Interstate Commerce Commission v. Union P. R. Co., 222 U. S. 541-547, 56 L. ed. 308-311, 32 Sup. Ct. Rep. 108; and Cedar Rapids Gaslight Co. v. Cedar Rapids, 223 U. S. 655, 668, 56 L. ed. 594, 604, 32 Sup. Ct. Rep. 389.

"It is the result of these and similar decisions, that while in such cases as we have here this Court is confined to the Federal question involved, and therefore has not the authority to substitute its judgment for that of an administrative commission as to the wisdom or policy of an order complained of, and will not analyze or balance the evidence which was before the Commission for the purpose of determining whether it preponderates for or against the conclusion arrived at, yet it will, nevertheless, enter upon such an examination of the record as may be necessary to determine whether the Federal constitutional right claimed has been denied; as, in this case, whether there was such a want of hearing or such arbitrary or capricious

> actions on the part of the Commission as to violate the due process clause of the Constitution.
>
> "* * * and we agree with the court of appeals of New York in concluding that the action of the Commission complained of was not arbitrary or capricious, but was based on very substantial evidence, and therefore that, even if the courts differed with the Commission as to the expediency or wisdom of the order, they are without authority to substitute for its judgment their views of what may be reasonable or wise."

However, notwithstanding section 67 of the Public Utilities Act and its own prior decisions, the California court in the particular cases under review failed to follow the undoubted principle of law above set forth. The state court while basing its decision primarily on the question of Federal jurisdiction above discussed, did, however, refer briefly to the Commission's findings in the following language:

> "The respondents also urge the contention that since this court has decided in the case of Civic Center Association v. Railroad Commission, *supra*, that the Railroad Commission of California had jurisdiction to make and enforce orders providing for the elimination of those certain grade crossings involved, in part, in the proceedings before the Railroad Commission; and since the said commission had found and held in said proceedings that the establishment of a union terminal depot was an indispensable element in accomplishing the elimination of said grade crossings, the commission had the power to include in its order for the elimination of such grade crossings, the creation of such union terminal depot. There is no merit in this contention, for the reason, very aptly set forth in the extract above quoted from the decision of the New York Court of Appeals in the case of

> People etc. v. Public Service Commission, *supra*. It is also without merit for the further reason that notwithstanding the views expressed by the Railroad Commission in its findings and conclusions in the proceeding herein presented for review, we can perceive no indispensable relation between the elimination of grade crossings and the establishment of union depot facilities, nor can we see any insurmountable difficulty why jurisdiction over the matter of eliminating grade crossings may not be exercised in a proper case consistently, and it may be concurrently, with the exercise of the authority which is vested by the Act of Congress of 1920 in the Interstate Commerce Commission over the subject of union terminal depot facilities."

Thus, the state court has apparently rendered a decision contrary to those previously rendered and contrary to the principle followed by this honorable court. In this respect, we respectfully submit, the Supreme Court of California has erred.

3. Has the Commission under the police power of the state authority to order the railroads to erect a union depot as an essential measure for the elimination of dangerous grade crossings?

The Commission found, as above set forth, that a union depot was an essential measure for the elimination of grade crossings.

The primary object of the present proceeding is the protection of the people from the hazardous railroad grade crossings now existing in Los Angeles. This can only be accomplished by virtue of the police power of the state. That power has not been, and without a constitutional amendment *cannot be taken away* by any

legislation which Congress could enact. It is inviolably reserved to the states.

Gibbons v. Ogden, 9 Wheat. 1, 203; 6 L. ed. 23, 72;
United States v. DeWitt, 9 Wall. 41; 19 L. ed. 593;
Slaughter House cases, 16 Wall. 36, 62; 21 L. ed. 394, 404;
Patterson v. Kentucky, 97 U. S. 501-503; 24 L. ed. 1115, 1116;
Hamilton v. Kentucky Distilleries & W. Co., 251 U. S. 146, 156;
Cooley Const. Lim., 574;
Hammer v. Dogenhart, 247 U. S. 251.

It is true that Congress has enacted laws requiring safety appliances, headlights, etc., on all trains used in interstate commerce. The purpose of these laws is primarily to protect travelers and employees *on trains.* They are enacted under the power to regulate commerce. But the power to *regulate commerce* has nothing to do with the power to protect the citizen who uses the street crossing but who may never ride on a train. The latter power can only be exercised by the state.

If it should be said that the power of the state to protect the public using the streets conflicts with the operations of interstate carriers which also used the streets, then it must be answered that as to such conflict *the power of the state is supreme.* This was the holding of the United States Supreme Court in the recent case of *Erie Railroad v. Board of Public Utility Commissioners,* 254 U. S. 394; 65 L. ed. 322. In that case the court said, relative to an order of a state

commission requiring a carrier engaged in interstate commerce to abolish grade crossings:

"But it is argued that the order is unreasonable in the circumstances to which we have adverted, the principle applied to the regulation of public service corporations being invoked. Mississippi R. Commission v. Mobile & O. R. Co., 244 U. S. 388, 391, 61 L. ed. 1216, 1219, 37 Sup. Ct. Rep. 602; Chicago, B. & Q. R. Co. v. Railroad Commission, 237 U. S. 220, 59 L. ed. 926, P. U. R. 1915 C, 309, 35 Sup. Ct. Rep. 560. But the extent of the states' power varies in different cases from absolute to qualified, somewhat as the privilege in respect of inflicting pecuniary damage varies. The power of the state over grade crossings derives little light from cases on the power to regulate trains.

"Grade crossings call for a necessary adjustment of two conflicting interests,—that of the public using the streets, and that of the railroads and the public using them. Generically the streets represent the more important interest of the two. There can be no doubt that they did when these railroads were laid out, or that the advent of automobiles has given them an additional claim to consideration. They always are the necessity of the whole public, which the railroads, vital as they are, hardly can be called to the same extent. Being places to which the public is invited, and that it necessarily frequents, the state, in the care of which this interest is, and from which, ultimately, the railroads derive their right to occupy the land, has a constitutional right to insist that they shall not be made dangerous to the public, whatever may be the cost to the parties introducing the danger. That is one of the most obvious cases of the police power: * * * neither prospective bankruptcy nor engagement in interstate commerce can take away this fundamental right of the sovereign of the

soil. Denver & R. G. R. Co. v. Denver, 250 U. S. 241, 246, 63 L. ed. 958, 962, 39 Sup. Ct. Rep. 450."

Upon this authority we think that jurisdiction of the California Commission to require the complete elimination by interstate carriers, of grade crossings in the City of Los Angeles is unassailable, even though, as the Commission found, it is necessary to require the carriers to erect a union station in order to accomplish such elimination.

4. Does the Commission's order, in requiring the construction and use of the new union depot and the abandonment of the present facilities deprive railroads of property in violation of the guarantees under the Federal Constitution?

It was urged by respondents that the order requires the carriers to abandon large areas of land and to "destroy and scrap" adequate facilities of great value without making any provision for reimbursing them for the loss.

The evidence shows and the Commission found that the depots of the Salt Lake and Santa Fe were inadequate as facilities for passenger service and that the Southern Pacific depot was inadequate in that it failed to conform to any reasonable plan for the elimination of grade crossings. The evidence also shows that the Southern Pacific station, though of modern type, is located on a narrow site with restricted approach tracks making it really inadequate as a passenger facility. Finally there is the ultimate finding of the Commission that public necessity requires a *union depot*.

An order requiring the construction of a union depot necessarily carries with it the requirement that existing facilities be abandoned. If there is any public necessity for the union station then the abandonment of existing facilities is justified and there is no unconstitutional taking. Nearly every union depot case found in the reports has involved the abandonment of existing facilities, sometimes adequate and sometimes inadequate.

In the case of *Railroad Commission v. No. Ala. Ry.*, 62 So. 749-752, the railroads made the same objection, i. e. that requiring them to abandon existing facilities would be a taking of private property for public use without compensation.

The Supreme Court of Alabama said:

> "So long as the Commission acts within the rule above stated (referring to a matter not here involved), its orders in exercising the police power of the state is not violative of the state or federal constitutions as to condemning property without due process notwithstanding the railroad may lose the use of the old building or the use of the lot as a location for its passenger depot. It acquired the lot and erected the building with a full knowledge of and subject to the police power of the state."

In the case of *Railroad Commission v. Ala. Gt. So. Ry.*, 64 So. 13, a similar contention was made. We quote:

> "It is also contended by the railroad companies that the order of the Railroad Commission is void in that the order of the Railroad Commission requires each railroad company to abandon presently

> occupied depot facilities in the City of Bessemer, and to build, in conjunction with others, a union depot, whereas, the act authorizing the Railroad Commission to require the construction of a union depot does not authorize the Commission to compel the abandonment of depot and depot facilities, already erected and in use."

The order was nevertheless upheld as being "out of respect to public needs" and therefore "violative of no principle of constitutional law" (p. 16). And also on the ground that, "If the state has the power to which we have referred (the authority to require all railroad companies operating railroads within a city to use a union passenger station at that point), then it has the corresponding power to put that power into exercise" (p. 18). The "corresponding power" referred to includes the power to require the abandonment of existing depots.

The Supreme Court of Texas in *State v. St. L. & So. W. Ry.*, 165 S. W. 491-8, a union depot case, held as follows:

> "The statute explicitly grants the commission the power to require railroads to erect union depots, and this carries with it, by necessary implication, every power necessary to the accomplishment of such object."

To the same effect is the case of

Dewey v. At. Coast Line Ry., 55 S. E. 292; 142 N. C. 392.

In the case of *Gulf O. & S. F. Ry. Co. v. State*, 167 S. W. 192, a union depot case, the findings were that one of the railroads,

> "owns and operates a depot * * * which depot is old and inadequate for the reasonable needs of said place; said *depot is situated so as to be reasonably convenient and accessible* to the citizens having occasion to use the same"

and that the other railroad depot

> "is reasonably convenient and accessible to the people of Celeste."

It was also found that a

> "union depot, if constructed at the junction of the two roads, would be reasonably convenient and accessible to the people of Celeste."

Under these findings the Supreme Court of Texas upheld the order requiring the erection of the union depot and the abandonment of existing depots *one of which was adequate*.

To the same effect see *Mayor etc. of Worcester v. Norwich etc. Ry.*, 109 Mass. 103.

Respondents may urge that the present Southern Pacific depot was built under an express order of the Railroad Commission. The decision of the Commission in 3 C. R. C. 927, shows that the Southern Pacific *applied for permission* to build this depot and this permission was granted upon the express condition that "the approval of the Commission therefor, shall never be used as a defense against the separation of grade crossings in the State of California." When the Southern Pacific built this depot it knew, or must be presumed to have known, that it might be required to participate in the building of a union station at any time. The evidence shows that at least since 1911

there has been agitation in Los Angeles for a union depot at the site ordered by the Commission.

5. Does the Commission's requirement that the operation of trains on Alameda Street be eliminated after the construction of the union depot impair the obligation of a contract contained in a certain franchise permitting the railroads to operate trains on Alameda Street?

The record fails to disclose the exact terms of any franchise claimed by the Southern Pacific Company for the occupancy of Alameda Street. No such franchise was introduced in evidence. The report of Commission's engineering department (Commission's Exhibit 1) does however set forth what purports to be such a franchise and we may assume, as was done in the case of *Denver & Rio Grande v. Denver*, 250 U. S. 242, that the railroad is the holder of such franchise as the City of Los Angeles was authorized to grant.

It is not claimed and no claim could be made that a franchise was ever granted directly to the Southern Pacific by a special act of the legislature.

Railroad corporations obtain their franchises to exist as corporations directly from the state under the general provisions of the Civil Code of California applicable to all corporations. (Civil Code, sections 283-299.) Of these sections, sections 291-295 inclusive pertain to the incorporation of railroads. The entire subject of the corporate franchises of railroad corporations is embraced within the aforementioned sections. The franchise or authority to construct railroads upon streets and highways within the State of California is specifically granted to railroad corpora-

tions by Civil Code section 465, subdivision 5, which provides as follows:

> "Section 465. * * * Every railroad corporation has power:
>
> 5. To construct their roads across, along or upon any stream of water, watercourse, roadstead, bay, navigable stream, street, avenue or highway, or across any railway, canal, ditch or flume which the route of its road intersects, crosses or runs along, in such manner as to afford security for life and property; but the corporation shall restore the stream or watercourse, road, street, avenue, highway, railroad, canal, ditch, or flume thus intersected to its former state of usefulness as near as may be, or so that the railroad shall not unnecessarily impair its usefulness or injure its franchise."

Any franchise to use the streets of the City of Los Angeles held by the Southern Pacific Company must have been acquired by virtue of this code section. But in addition to this franchise from the state, the Civil Code, section 470, requires that a railroad must obtain the consent of the governing body of an incorporated city before it can use or occupy any street therein. Section 470, Civil Code, reads as follows:

> "Section 470. No railroad corporation must use any street, alley, or highway, or any of the land or water, within any incorporated city or town, unless the right to so use the same is granted by a two-third vote of the town or city authority from which the right must emanate."

It has been held by the Supreme Court of California that a railroad can acquire no greater rights in the streets of the City of Los Angeles than the city has the

power to grant under the specific provisions of subdivision 5, section 465, Civil Code, as modified by section 470, Civil Code. In the case of *Los Angeles v. Southern Pacific Railroad Co.*, 157 Cal. 363-8, referring to these two code sections, the court said:

> "Section 470 of the Civil Code * * * is simply a limitation upon such authorization, (referring to subd. 5, sec. 465) making such a grant by the town or city authority a condition precedent to the exercise of the power given by the legislature so far as streets in incorporated cities or towns are concerned."

To the same effect, see *Simons Brick Co. v. City of Los Angeles*, 182 Cal. 230-5.

A distinction may here be drawn between a franchise in the true sense and a mere permit to occupy a particular street. Having built its railroads and engaged in the business of a common carrier of persons and property the Southern Pacific Company became the recipient of such franchise rights as the state granted under the statutes above referred to. But the determination by the City of Los Angeles of the particular streets which the railroad thus enfranchised by the state should occupy, involved no additional grant of franchise, in the true sense of the word. The only jurisdiction exercised by the city was the local police power of determining how its streets should be used by the common carrier, consistently with public covenience and safety. This distinction between a franchise in the true sense and the mere permit for the occupancy of city streets was recognized in the Su-

preme Court of California in the case of *Oro Electric Corp. v. Railroad Commission,* 169 Cal. 466-476, where it was held that the City of Stockton had no power to grant franchises to carry on the business of selling electricity to the inhabitants, but did have

> "at most, the limited power above mentioned, i. e. nothing more than the power to grant to electric corporations, the right to use its streets".

We think the same situation exists here. The Southern Pacific acquired its franchise to carry on its business as a common carrier and to operate on all highways both within and without cities, directly from the state. It can have nothing more than a permit to use the city streets of the City of Los Angeles. Such a permit is granted under the police power and the same power may modify it for the protection of the people from danger. Such change does not impair or affect the company's *franchise* to operate into Los Angeles. It simply requires it to operate into Los Angeles in a safe manner. Such a permit to use the streets is subject to the police power and must be exercised under the conditions set forth in sec. 465, sub. 5, of the California Civil Code. It is there provided that railroad corporations may construct their roads along or upon any street or highway "*in such manner as to afford security for life and property*". We submit that this is an essential and continuing condition which the railroad company must fulfil if it is to maintain its right to the use of the street. The Commission found and the Southern Pacific Company has admitted that

its road is not so constructed along Alameda Street as to afford security for life and property.

We respectfully submit that the right to the use of Alameda Street claimed by the Southern Pacific is a strictly limited one, as described by the above statute, and that it is not in the true sense a franchise. It is a permit, which, though not revocable at will, is necessarily subject to modification or even complete revocation whenever the necessities of the public require it. The city could not alienate its police power to protect its citizens from dangerous conditions arising in a public street.

We think the case of *Denver & Rio Grande R. Co. v. Denver*, 250 U. S. 242; 63 L. ed. 961, is squarely in point on this proposition and goes much further than it is necessary to go in the present case.

In that case an ordinance was enacted directing the *removal* of a railroad track from the intersection of two streets in Denver. In the present case the tracks have not been ordered to be removed, but are to be retained for freight switching.

Answering objections similar to those made in this case, this court there said:

> "The track in Wynkoop street has been there since 1871, and we shall assume, as did the supreme court of the state, that it was put there in virtue of some ordinance of that period, and that the ordinance became a contract and the right granted became a vested property right. But, as this court often has held, such contracts and rights are held subject to the fair exercise by the state,

or the municipality as its agent, of the power to adopt and enforce such regulations as are reasonably necessary to secure the public safety; for this power 'is inalienable even by express grant', and its legitimate exertion contravenes neither the contract clause of the Constitution nor the due process clause of the 14th Amendment. Atlantic Coast Line R. Co. v. Goldsboro, 232 U. S. 548, 558, 58 L. ed. 721, 726, 34 Sup. Ct. Rep. 364; Chicago and A. R. Co. v. Tranbarger, 238 U. S. 67, 76, 59 L. ed. 1204, 1210, 35 Sup. Ct. Rep. 678. * * *"

"The scope of the power and instances of its application are shown in the decisions sustaining regulations (a) requiring railroad companies at their own expense to abrogate grade crossings by elevating or depressing their tracks and putting in bridges or viaducts at public crossings (Northern P. R. Co. v. Duluth, 208 U. S. 583, 52 L. ed. 630, 28 Sup. Ct. Rep. 341; Chicago, M. & St. P. R. Co. v. Minneapolis, 232 U. S. 430, 58 L. ed. 671, 34 Sup. Ct. Rep. 400; Missouri P. R. Co. v. Omaha, 235 U. S. 121, 59 L. ed. 157, 35 Sup. Ct. Rep. 82), (b) requiring a railroad company at its own cost to change the location of a track and also to elevate it as a means of making travel on a highway safe. (New York and N. E. R. Co. v. Bristol, 151 U. S. 556, 38 L. ed. 269, 14 Sup. Ct. Rep. 437), (c) prohibiting a railroad company from laying more than a single track, in a narrow, busy street, although its franchise authorized it to lay a double track there (Baltimore v. Baltimore Trust & G. Co., 166 U. S. 673, 41 L. ed. 1160, 17 Sup. Ct. Rep. 696), and (d) requiring a gas company whose mains and pipes were laid beneath the surface of a street under an existing franchise to shift them to another location at its own cost to make room for a public drainage system (New Orleans Gaslight Co. v. Drainage Commission, 197 U. S. 453, 49 L. ed. 831, 25 Sup. Ct. Rep. 471)."

The court after discussing the reasonableness of the order holds:

> "The situation is unusual and the ordinance deals with it in a rather practical way. Giving effect to all that appears, we are unable to say that what is required is plainly unreasonable and arbitrary."

The limitation on the power of the city to alienate or restrict the exercise of the state's sovereign power of regulation is fully defined in *Home Telephone and Telegraph Co. v. City of Los Angeles*, 211 U. S. 265; 53 L. ed. 176.

6. Is the Commission's order invalid because it may require the railroads to expend large sums of money and to exercise the power of eminent domain in acquiring the necessary land and constructing a union depot?

It was urged by respondents that the order of the Commission invaded their rights under the Federal Constitution because the effect of the order was to require them to expend large sums of money and to acquire new property. It is true that the Commission's order directed respondents to procure grounds for a union depot within a specified area. To acquire the necessary property, construct a union depot and to eliminate the grade crossings as ordered will, of course, require the expenditure of considerable money. That a public utility may be required to expend money for such purposes and, if necessary, to exercise the power of eminent domain in order to perform its public utility

functions has been held, however, in the following cases:

Erie Railroad v. Board of Public Utility Commissioners, Adv. Ops. Feb. 1, 1921, No. 6, pp. 199-201;

Wisconsin M. & P. R. Co. v. Jacobson, 179 U. S. 287; 45 L. ed. 194-201, quoted with approval in *Pac. T. & T. Co. v. Eshleman,* 166 Cal. 672;

Mulke v. N. Y. & Harlem R. Co., 197 U. S. 544; 49 L. ed. 872;

Atlantic Coast Line R. Co. v. N. Carolina Corp. Com., 206 U. S. 1; 51 L. ed. 933, 945;

Mobile etc. Ry. Co. v. Mississippi, 210 U. S. 187; 52 L. ed. 1016-1024;

Grand Trunk R. Co. v. Michigan R. R. Com., 231 U. S. 470; 58 L. ed. 318;

Ala. Great So. Ry. v. R. R. Com. of Ala., 64 So. 13; 185 Ala. 354;

Lukrawka v. Spring Valley W. Co., 169 Cal. 318-333.

It was claimed that the order here under review requires the expenditure of an excessively large sum of money. Not having filed plans as directed by the Commission, it is impossible for respondents or anyone else to say what it will cost to comply with the Commission's order. That the present conditions in Los Angeles justify very extensive and costly changes is, however, clearly indicated both by the estimates of engineer witnesses and by the application filed by the Southern Pacific and Salt Lake companies in which

they sought in another way, whether less costly or not cannot yet be determined, to accomplish some of the changes and improvements directed by the Commission's order.

We respectfully submit that the decision of the Supreme Court of California here under review should be reversed.

Dated, San Francisco,
October 13, 1923.

Respectfully submitted,

HUGH GORDON,
WILLIAM W. CLARY,
Attorneys for Petitioner.

In the Supreme Court

OF THE

United States

October Term, 1923

No. 285

Supreme Court,
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WM. R. STANSB
CL

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,
Petitioner,

vs.

LOS ANGELES AND SALT LAKE RAILROAD COMPANY (a Corporation),
Respondent.

Certiorari to the Supreme Court of the State of California

Brief for Respondent

LOS ANGELES AND SALT LAKE RAILROAD COMPANY.

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In the Supreme Court

OF THE

United States

October Term, 1923

No. 285

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,
Petitioner,

vs.

LOS ANGELES AND SALT LAKE RAILROAD COMPANY (a Corporation),
Respondent.

Certiorari to the Supreme Court of the State of California

BRIEF FOR RESPONDENT, LOS ANGELES AND SALT LAKE RAILROAD COMPANY.

STATEMENT OF THE CASE

Writs of certiorari have been granted upon the petition of the Railroad Commission of the State of California, directed to the Supreme Court of that State, to review a decision rendered by the Supreme Court of the State of California, wherein the state court annulled orders entered by the Rail-

road Commission of the State of California requiring the Atchison, Topeka & Santa Fe Railway Company, Los Angeles & Salt Lake Railroad Company, Southern Pacific Company, and Southern Pacific Railroad Company to "make and construct * * * additions, *extensions*,* improvements to, and changes in, their railroad facilities in the City of Los Angeles, and to erect a union passenger station and buildings incidental thereto in said City of Los Angeles" at a designated site remote from the existing passenger stations of respondents; "and perform such work and make and construct the necessary fills, cuts, viaducts and other works and structures necessary for a separation of grades at" certain specified crossings. (Original Order, Tr. 104, 105).

The Commission's orders further provided that Southern Pacific Company should "eliminate all main line traffic from Alameda Street" for a distance of about three miles, over which thirty-nine trains carrying interstate passengers are operated each twenty-four hours.

The Commission's orders will require the Atchison, Topeka & Santa Fe Railway Company, the Los Angeles & Salt Lake Railroad Company, Southern Pacific Company, and Southern Pacific Railroad Company, to *abandon* their existing passenger

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* (Italics are ours unless otherwise noted.)

(We will refer to petitioner's brief filed in support of the petition for writ as "Brief for Petitioner" and to the second brief filed as "Supplemental Brief.")

station facilities in the City of Los Angeles, including the modern passenger station of the Southern Pacific Company, erected in 1915 under plans and specifications approved by the California Railroad Commission by formal order, although the uncontradicted evidence shows that the existing passenger terminal facilities of the Southern Pacific Company are adequate to accommodate all passenger traffic of the three steam lines for at least a period of twenty years and that properties owned by the Santa Fe "offer a suitable location for a union passenger terminal" and the Los Angeles & Salt Lake Railroad Company owns ample property to provide all necessary facilities in handling their passenger traffic.

As is stated by counsel for petitioners in their petition for writ of certiorari, "the relief asked by the various complaints (before the Commission) *included a general investigation of the whole railroad and terminal situation*" (pp. 3, 4).

The orders require the carriers to "proceed to the procurement of sufficient ground within the boundaries hereinafter set out, and proceed with the construction of an adequate union passenger station thereon and buildings incidental thereto in the City of Los Angeles, and to make such *additions to, extensions of*, improvements and changes in the existing railroad facilities of said companies as may be reasonable, necessary and incidental to the use of said union passenger station." (Tr. 146.)

It is conceded by counsel for petitioners in their brief (pp. 17 and 18) that in order to carry the Commission's orders into effect the carriers would be obliged to make *extensions of their main lines* to reach the proposed site of the union depot or to effect some arrangement for the *joint use of tracks* and that "the erection of a new union depot and the elimination of grade crossings will require a rearrangement of traffic. Some new track may have to be laid and some old track abandoned." (Petitioner's Brief p. 21.)

To carry the Commission's orders into effect the carriers would be required to expend a sum estimated as low as $25,396,633 and as high as $45,092,104. (Tr. 94.)

REVIEW BY STATE SUPREME COURT

The Commission's orders becoming final, each of the carriers thereupon filed in the Supreme Court of the State of California a petition for writ of review in conformity with the provisions of Section 67 of the Public Utilities Act of the State of California (Tr. 169, 185, 190), alleging that the lines of railroad owned and operated by it formed a component, integral and essential part of an interstate system of steam railroads and are operated as a unit as an interstate system for the transportation of freight and passengers in interstate and intrastate commerce, and drawing in question the validity of the California statute upon

which the Railroad Commission had predicated their orders and the authority exercised under these statutes upon the ground that the state statute and the authority sought to be exercised were repugnant to the Constitution and laws of the United States.

The grounds upon which these petitions were rested, briefly stated, are:

That the decisions and orders of the Railroad Commission of the State of California are beyond the power and jurisdiction of that Commission and are in contravention of and repugnant to Section 8 of Article I of the Constitution of the United States; and of Subdivision 15 of Section 1 of the Act of the Congress of the United States generally known as the Interstate Commerce Act, approved February 4, 1887, as amended; and of Subdivisions 18 to 22, inclusive, of the same section; and of Subdivision 4 of Section 3 of said Act as amended; and of Subdivision 4 of Section 5 of said act as amended; and of Subdivisions 2 and 3 of Section 15-A of said Act, as amended, which section was added to said Act by the Transportation Act of 1920; and of Subdivision 2 of Section 20-A of said Interstate Commerce Act, as amended, and particularly as amended by said Transportation Act.

That the Railroad Commission of the State of California has no jurisdiction to require the respondents to comply with said orders for the

reason that the necessary force and effect of such orders is to require the joint use of terminal facilities owned by the several carriers which are used by them in the conduct of their business by one or more of the other carriers, and to require the joint use of main track or tracks of each of the carriers for a distance outside of its terminal, both by the owner and one or more of the other carriers, whereas at the time the Commission's orders and decisions were rendered power and authority to require the use of terminal facilities, including main line tracks or tracks for a reasonable distance outside the terminals, by any other carrier or carriers, was vested solely in the Interstate Commerce Commission by the provisions of Paragraph 4 of Section 3, and Paragraph 15 of Section 1 of the Interstate Commerce Act, as amended in 1920.

That the California Railroad Commission has no jurisdiction to require the Respondents to comply with the provisions of the orders for the reason that the necessary force and effect of the orders so entered is to require each of the carriers to undertake the abandonment and extension of its lines of railroad and the construction of a new line of railroad and facilities, and the operation thereof under said extensions, and the joint use of such extensions and new line by each of the carriers and the other carriers involved in the order, whereas at the time said decisions and orders were entered no such extension

of lines or construction of new line could be undertaken by the carriers until there had been obtained from the Interstate Commerce Commission a certificate under the provisions of paragraphs 18 to 22, inclusive, of Section 1 of the Interstate Commerce Act, as amended, permitting the carriers to make such extension, and that the orders of the California Commission, therefore, invade the authority and jurisdiction of the Interstate Commerce Commission and are in contravention of and repugnant to Section 8 of Article I of the Constitution of the United States.

That the Railroad Commission of the State of California had no jurisdiction or power to make or enter its orders because, in order to comply therewith, the carriers are required to make expenditures of great and unreasonable sums out of proportion to any benefits to be derived therefrom by the carriers or their passengers, or the public generally, and the necessary effect of the orders will be to require each of the carriers to expend sums which could only be obtained by the issuance of securities under the authority and supervision of the Interstate Commerce Commission as provided by Section 20-A of the Interstate Commerce Act, and that, therefore, the power sought to be exercised by the State Commission is in contravention of the Interstate Commerce Act and Section 8 of Article I of the Constitution of the United States.

That the Commission's decisions and orders are in contravention of and repugnant to the provisions of Section 1 of the Fourteenth Amendment of the Constitution of the United States for the reason that the necessary effect of said orders is to require the railroads to share the use of the passenger terminal facilities owned and operated by them respectively in the City of Los Angeles, together with their main track or tracks for a reasonable distance beyond their terminals, with the other carriers named in the decisions and orders, without compensation for the damages which the railroads will necessarily sustain.

That the Commission's decisions and orders were in contravention of and repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States by reason of the fact that respondents were by said decisions and orders denied the equal protection of the laws and deprived of their property without due process of law for the reason that no evidence was introduced before said Commission to the effect that the passenger terminal facilities owned and operated by carriers respectively in the City of Los Angeles are inadequate to meet the public convenience and necessity.

That the Commission's decisions and orders are repugnant to the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States by reason of the fact that the uncontradicted evidence introduced before said Com-

mission shows that the present facilities and passenger station of Southern Pacific Company and Southern Pacific Railroad Company are adequate to accommodate all passenger traffic of respondents within said City of Los Angeles and in addition thereto to accommodate all the passenger traffic of the other steam line carriers named in said decisions and orders, not only at the present time, but for at least a period of twenty years from the present time, and, therefore, public convenience, necessity and safety do not require these companies to abandon the passenger facilities owned and operated by them, and join the other carriers named in said decisions and orders in the expense of constructing a union passenger station and buildings incidental thereto at the site specified by said Commission in its said decisions and orders.

The Southern Pacific Company and Southern Pacific Railroad Company also contended that the Commission's decisions and orders are in contravention of and repugnant to the provisions of Section 10 of Article I of the Constitution of the United States and of the Fourteenth Amendment to the Constitution of the United States by reason of the fact that these decisions and orders will, if made effective, impair the contract made between the State of California and Southern Pacific Railroad Company, and the contract made and entered into between the City of Los Angeles and petitioner Southern Pacific Railroad Company,

granting a franchise authorizing the construction and operation of its railroad on and along Alameda Street in the City of Los Angeles.

DECISION OF THE SUPREME COURT OF THE STATE OF CALIFORNIA

The state court by unanimous opinion sustained the constitutional rights asserted by the carriers and decided in their favor upon the sole ground that the state statute was repugnant to the Federal statute, and concluded "that full power and authority over the matter of union terminal depot facilities of the railroads who are largely engaged in interstate commerce, and who are the petitioners herein, has been vested in the Interstate Commerce Commission under the terms of said amendatory act of 1920, and that by virtue thereof the Railroad Commission of California, one of the respondents herein, has been divested of the power, authority and jurisdiction over that subject, sought by it to be exercised in the several proceedings before it and by the order presented for review herein." (Tr. 233.)

The state court further held that the question decided by it made it unnecessary to decide the other questions raised by the carriers in their petitions for writ of review, all of which were separable and related to the denial of rights in violation of the Federal Constitution.

The three petitions for writs of certiorari filed in this court relate solely to the question of the respective jurisdiction of the Federal and State Commissions. (Petitions, pp. 8, 9.)

Consolidation of Cases

In view of the fact that the several proceedings before the Railroad Commission, including the application made by the carriers and the order for a general investigation, were consolidated by an order of the Commission and treated as one proceeding, and, as was stated by counsel for petitioners, "the three proceedings (instituted in the state court) raised almost identical questions and could be treated by the State Supreme Court as one case" and for the purpose of economizing time and effort the respondents in the three cases pending before this court will file in each case an identical brief.

ARGUMENT.

SCOPE OF REVIEW BY THIS COURT

Counsel for petitioner have set forth in their brief at page 5 that it has been deemed proper to submit a supplemental stipulated record containing such transcript of evidence as is necessary to enable this court to determine all the points raised by respondents in their petitions for writs of review addressed to the state court. Counsel for all parties have joined in stipulating the supplemental transcript and exhibits into the record filed in this court in order that this court may determine all points raised in the Supreme Court of the state in the event this court concludes to decide these questions.

Counsel for respondents will later undertake to reply to the arguments relating to these other points which have been argued by counsel for petitioner in their brief, but nevertheless we hold it our duty to respectfully suggest the reasons why this court in these proceedings should not undertake to review any question other than that decided by the state court.

We were at first inclined to accept the conclusions which counsel for petitioner reached by relying upon the cases cited at page 5 of their brief but examination of these cases discloses that in the first three cases cited (*Southern Railway Company et al. v. Watts; Atlantic Coast Line R. R. v. Daughton; Greene v. L. & I. R. Co.*) the Supreme

Court of the United States was reviewing decisions rendered by inferior Federal courts and that the last case cited by petitioner's counsel (*Appleby v. Buffalo*) is not apposite as the case is authority only for the rule that "the right of this court to review the judgment of the highest court of the state is specifically limited by Section 709, Revised Statutes, and in cases such as this depends upon an alleged denial of a Federal right which the record shows was specifically set up and claimed in and denied by the state court, or that such was the necessary effect of the judgment."

A diligent examination of the authorities has failed to disclose any case similar to the case at bar. In practically all cases where this question has been raised it appears that there was a Federal question upon which the jurisdiction of this court was invoked and also questions relating to local or state law, whereas in the case at bar the respondents petitioned the state court for a writ of review of the Commission's orders upon several grounds, drawing in question the validity of the California statute and the authority exercised by that state through its Railroad Commission on the ground of their being repugnant to the Constitution and laws of the United States. (Paragraphs 9, 10, 11, 12, 13, 14, 15, petition for writ of review of Southern Pacific Company and Southern Pacific Railroad Company (Tr. 176-182);

paragraph 2, petition for writ of review of the Atchison, Topeka & Santa Fe Railway Company (Tr. 186); paragraph 3, petition of Los Angeles & Salt Lake Railroad Company (Tr. 192).)

The State Supreme Court rested its decision and judgment in each of respondents' petitions upon the relative and respective jurisdictions of the Interstate Commerce Commission and the Railroad Commission of the State of California (Tr. 233). The State Court further held that the disposition of the question decided rendered unnecessary a discussion of the other questions which had been raised by the respondents in the petitions filed in the State Court. (Tr. 233-4.)

The petitions for writs of certiorari filed in the instant cases are addressed entirely to a review of the one question decided by the State Supreme Court and the original brief filed in support of the petition for the writ of certiorari relates exclusively to this one question.

The question whether all the grounds relied upon by the respondents in their petitions for review filed in the State Court should be reviewed by this Court in this proceeding would be easy of solution in the event all other grounds urged upon the State Court for writs of review had related to local or state law for the reason that this question is set at rest by a long line of harmonious decisions ren-

dered by this Court under the Acts of 1789 and 1867 and Section 237 of the Judicial Code.

But the facts in these cases are peculiar in that all the grounds upon which the carriers relied in seeking writs of review from the State Court were, as is shown by the petitions for writs of review, of a Federal nature.

We have reached the conclusion that the authorities hereinafter cited sustain the rule that on a hearing of a writ of certiorari or a writ of error addressed to "the highest court of the state" under the provisions of Section 237 of the Judicial Code this Court, in considering the questions presented, will confine itself to a consideration only of such *Federal* questions as have been *decided* by the highest court of the State.

> *Murdock v. City of Memphis*, 20 Wall. 590 (87 U. S.).

See also *Railroad Co. v. Maryland*, 20 Wall. 643, 645.

The two cases last cited, as well as many cases hereinafter cited, were, it is true, made under the provisions of the Federal Judiciary Act which has been superseded by Section 237 of the Judicial Code, but they are nevertheless applicable in view of the similarity of the provisions of the statutes then and now in force.

"The jurisdiction of this court to review the proceedings of the state courts, as we have had frequent occasion to declare, is not that of a general reviewing court in error, but is limited to the specific instances of *denials* of Federal rights, whether those pertaining to the constitutionality of Federal or State statutes, or to certain rights, immunities and privileges of Federal origin, specially set up in the State Court and *denied* by the rulings and judgment of that court. * * *"

Waters-Pierce Oil Co. v. Texas, 212 U. S. 86, 97.

St. Louis, etc., v. Taylor, 210 U. S. 267.

Seaboard Air Line Ry. v. Duvall, 225 U. S. 477, 487.

Keokuk & Hamilton Bridge Co. v. Illinois, 175 U. S. 633-4.

Harding v. Illinois, 196 U. S. 78, 85-6.

Eustis v. Bolles, 150 U. S. 361, 366.

In support of our contention that this Court will confine its attention only in its examination of the questions arising in connection with the writ of certiorari to the points or questions covered by the petitioner's assignment of errors as to which review is prayed, we direct the Court's attention to the case of *Alice State Bank v. Houston Passenger Company*, 247 U. S. 240, which was a case of certiorari to the Federal Circuit Court of Appeals. It was there held:

"Upon a review by certiorari, the court confines its discussion to the matter relied on in procuring the writ."

At page 242, when referring to a contention which might have been made for a reversal of the judgment, the Court said:

> "But as that is not the ground upon which the writ of certiorari was asked or granted, we confine our discussion to the matter relied upon in asking the intervention of this Court," citing *Hubbard v. Tod*, 171 U. S. 474, 494.

We can conceive of no reason why the rules announced in these cases are not equally applicable in a case where writs of error or certiorari have been directed to a State court.

It appears from the foregoing authorities that where this court has only determined the question decided by the State Court it has remanded the case to the State Court where reversal is ordered, with instructions to the State Court for further proceedings not inconsistent with the opinion of this court.

Kinzell v. C. M. & St. P. Ry. Co., 250 U. S. 130.

Coe v. Armour Fertilizer Works, 237 U. S. 413.

Upon cases being so remanded by this Court to the highest courts of the States, the State Courts will proceed to determine the questions which were not originally adjudicated by them.

Kinzell v. C. M. & St. P. Ry. Co., 190 Pac. 255.

Ettor v. City of Tacoma, 77 Wash. 267, 137 Pac. 120.

Gibson v. Chouteau, 50 Mo. 85.

Goodtitle v. Kibbe, 1 Ala. 403.

Simonson v. Monson, 36 S. D. 245, 153 N. W. 1020.

Harding v. Harding, 148 Cal. 397.

The authorities cited warrant the conclusion that any Federal questions raised in the State Supreme Court by the petitions for writ of review which were not considered and decided by the State Court are not open to consideration in these proceedings.

However, in view of our inability to find a case exactly in point, we will, after presenting an argument in support of the correctness of the State Court's decision, through caution present a brief argument in support of the other questions presented to the Supreme Court of the State of California and which were not decided by it, so that in the event this Court concludes that it is incumbent upon it to decide these questions, the Court will be fully advised as to the respondents' contentions.

THE ORDERS OF THE STATE COMMISSION ARE VOID BECAUSE THEY CONFLICT WITH THE POWERS CONFERRED UPON THE INTERSTATE COMMERCE COMMISSION BY THE TRANSPORTATION ACT OF 1920.

The proceedings were begun before the California Commission and the Southern Pacific and Salt Lake lines applied to that Commission to consolidate their terminal facilities and the California Commission entered upon a general investigation of the entire terminal situation at Los Angeles upon its own motion long before the passage of the Transportation Act of 1920. After the passage of that act the respondents formally questioned the jurisdiction of the State Commission in the proceedings before that body.

In the petitions for writs of review filed in the Supreme Court of the State of California there was drawn in question the validity of the California statute and the authority sought to be exercised thereunder by the State Commission, upon the ground that by reason of these amendments to the Interstate Commerce Act the validity of the California statute and the authority sought to be exercised thereunder by the Commission were in contravention of and repugnant to the Act to Regulate Commerce and to Section 8 of Article I of the Constitution of the United States (Tr. 180, 181, 187, 188, 192,

193), and it was held by the highest court of the state "that full power and authority over the matter of union terminal depot facilities of the railroads who are largely engaged in interstate commerce, and who are the petitioners herein, has been vested in the Interstate Commerce Commission under the terms of said amendatory act of 1920, and that by virtue thereof the Railroad Commission of California, one of the respondents herein, has been divested of the power, authority and jurisdiction over that subject, sought by it to be exercised in the several proceedings before it and by the order presented for review herein." (Tr. 233.)

It therefore appears that the question of the exclusive jurisdiction and control of the subject matter of these controversies by the Federal Commission and resultant lack of jurisdiction of the State Commission to enter the orders set forth in the transcript has been considered of controlling importance.

Requirements, Scope and Effect of the Orders of the State Commission

This question necessarily can not be determined without first giving consideration to the express requirements and necessary effect of the Commission's decisions and orders. In entering its second order the California Commission held that as far as its original decision and order were

considered "pertinent and of value" that it was approved except as modified in the second decision and order, and therefore the orders must be read and considered together.

As is stated by counsel for petitioner in the brief in support of their petition for the writ:

> "The relief asked by the various complaints included a *general investigation of the whole railroad and terminal situation*, the separation or abolition of dangerous grade crossings, and the construction and use jointly by the three railroad companies of the union passenger depot." (Br. pp. 3, 4.)

It is contended by the petitioner's counsel at page 3 of their supplemental brief that the order requires the respondents to:

> Procure jointly grounds for a union depot within a specified area.
>
> File plans and specifications jointly for the construction of a union passenger depot.
>
> Construction of a depot in accordance with the plans.
>
> Eliminate certain grade crossings.

Respondents agree that the requirements of the order are as stated by counsel but that there are many other requirements of the orders which have not been specified by petitioner's counsel and which will hereafter be set forth.

Elimination of Grade Crossings

So far as grade elimination is concerned it may be here stated that there never has been any controversy between the complainants in the proceedings before the Commission and the carriers, or between the carriers and the Commission, as to the necessity of eliminating the grade crossings specified in the Commission's order.

It may be incidentally related that under the plan proposed by the Southern Pacific and Salt Lake lines, as fully set forth in the application made by these lines (Tr. p. 31) and the agreement attached to the application found in the appendix of the supplemental transcript, (p. 573) according to the uncontradicted evidence of the engineering experts of these lines, would entirely eliminate all grade crossings of the steam lines and in addition would eliminate 21,600 street crossing movements of the Pacific Electric suburban trains daily, which would not be eliminated under the orders entered by the Commission. Unqualified statements to similar effect were made by counsel representing the carriers from the beginning of the proceedings until they closed their final arguments.

THE CALIFORNIA COMMISSION'S ORDERS REQUIRE RESPONDENTS TO EXTEND, ABANDON PORTIONS OF MAIN LINES AND TERMINAL FACILITIES, AND CONSOLIDATE TERMINAL FACILITIES, AND MAKE JOINT USE THEREOF.

Respondents disagree, however, with counsel's statements as to what the orders do not require. It is contended that the orders do not require the construction or extension of any line of railroad. It is unnecessary to refer to the transcript to refute this statement because of the statements contained in the brief filed by petitioner in support of their petition for the writ. The map attached to Petitioner's brief does not, as is contended by counsel at page 17 of that brief, show that the Salt Lake and Santa Fe lines border the area designated by the Commission in which the carriers are required to construct a union terminal. The map shows that the Salt Lake line does not own or operate any track that "borders" or in any wise reaches any part of the specified area. The Salt Lake line would be obliged to either extend its line across the Los Angeles River to the site of the union depot or arrange with either the Southern Pacific or Santa Fe lines for the joint use of their trackage, or as a possible alternative extend its lines from the point marked "spur" on the southerly portion of the map to which reference has been made across the river and thence through the industrial section of Los Angeles to the "area fixed by the order."

By reason of the fact that the Southern Pacific Company is obliged to eliminate all its main line traffic from Alameda Street from Fifteenth Street on the south to College Street on the north, a distance of three miles, thereby completely severing its main line operations between these points, it will be obliged to provide a means of carrying its lines between Fifteenth and College Streets by the "extension" of new lines or by the "joint use of main line and terminal facilities" of one or both of the other steam lines. This is conceded by counsel for petitioner at pages 17 and 18 of their brief where it is stated:

> "It is obvious from an inspection of the map that this southerly traffic can reach the proposed depot site in at least three different ways; by a *new line* which the Southern Pacific might construct along the river bed reaching the depot in the same way that the southerly lines of the Salt Lake and Santa Fe reach it; by some arrangement with either the Salt Lake or Santa Fe for a *joint use of tracks* for southerly traffic; by an amendment to the commission's order permitting the southerly traffic to come into the depot upon the present tracks along Alameda Street."

The suggestion contained in this statement that there be a further amendment to the Commission's order, of course should be given no consideration because we are here concerned with orders that have been made and sought to be effected and not with possible amendments thereof.

That there must be "extensions" of existing lines is further shown by the statement found on page 21 of the petitioner's brief to which reference has been made.

> "True, the erection of a new union depot and the elimination of grade crossings will require a rearrangement of traffic. Some new track may have to be laid and some old track abandoned."

The express provisions of the Commission's orders show conclusively that the carriers are required to make extensions in their lines. The orders provide that the carriers "proceed to the procurement of sufficient grounds within the boundaries hereinafter set out, and proceed with the construction of an adequate union passenger station thereon and buildings incidental thereto in the City of Los Angeles, and to make such *additions to, extensions of,* improvements and changes in the existing railroad facilities of said companies as may be reasonable necessary and incidental to the use of said union passenger station." (Tr. 146.)

It is further argued that the orders do not require the "abandonment of any line of railroad." It is inconceivable that such contention should be made in view of paragraph 14 of the final order entered by the California Commission. (Tr. 150, 151.) The Southern Pacific Company is required by this provision of the order to abandon this three miles of its main line for all train operation

over which it operates 39 main line passenger trains carrying interstate passengers each day. (C. R. C. Exhibit No. 29.)

Counsel for petitioner seek to discount these controlling facts by arguing (Br. p. 23:)

> "Here, the carriers will not abandon or cease operating their roads or any part of them. They will merely shift their lines in such a way as to carry on the same operations they do now, but with more safety and convenience to the public."

But, nevertheless, the admission is made (Br. p. 21) that "some new track may have to be laid and some old track abandoned." But the geography of the territory involved in the Commission's orders, as shown on the map incorporated in petitioner's brief and the statements contained in their brief, lead to the inevitable conclusion that the Commission's orders expressly and also by their necessary effect require the carriers to make extensions of their lines, to abandon portions of their lines, and further contemplate the joint use of terminal facilities, main line and trackage by the other carriers. (See petitioner's brief pp. 17, 18, 21, 26).

It is impossible to escape the conviction that the findings and conclusions of the Commission require a comprehensive abandonment, extension, and consolidation of the terminal facilities of re-

spondents at the City of Los Angeles, the extent to which the orders go being further emphasized by the fact that the respondents will be required to expend a sum of $36,002,191 in fulfilling the requirements of the Commission's orders irrespective of the expense of eliminating grade crossings. (C. R. C. Exhibit No. 2. S. P.-S. L. Exhibit No. 27.)

THE NEW NATIONAL POLICY DECLARED BY THE AMENDMENTS OF 1920 TO THE INTERSTATE COMMERCE ACT.

Under the provisions of the amendments to the Act to Regulate Commerce, approved February 28, 1920, Chapter 91, 41 Stats. at L. 456, Congress enlarged the authority of the Interstate Commerce Commission and vested the Commission with power and authority to require carriers "subject to the jurisdiction of the Interstate Commerce Commission" to extend and consolidate their lines and terminal facilities thereby depriving state commissions of any similar jurisdiction that they might previously have exercised, and no carrier may abandon any portion of its line without express authority of the Interstate Commerce Commission.

In deciding the case of *Railroad Commission of Wisconsin, et al. vs. C. B. & Q. Ry. Co.*, 257 U. S. 563, this court, referring to the compre-

hensive amendments that had been made to the Interstate Commerce Act held that it was "manifest from this very condensed recital that the act made a new departure" and we may add not only as far as the regulation of rates is concerned but also with reference to the financial affairs and actual operations of the carriers.

This court has had frequent occasion to consider these amendments to the Interstate Commerce Act and it is therefore deemed unnecessary to do more than make brief reference to the amendments upon which respondents rely.

In construing the amended act in order to properly determine what jurisdiction has been confided to the Interstate Commerce Commission to the exclusion of the state commissions, it is necessary in accordance with the elementary rule of statutory construction to consider the act in its entirety.

It will then become apparent that Congress in the exercise of its constitutional power sought by these amendments to vest the Federal Commission with authority to regulate carriers "subject to the jurisdiction of the Interstate Commerce Commission" in a more comprehensive and complete manner than was contemplated prior to the amendments of 1920, and that it was the intention of Congress to occupy by Federal control the entire field as far as necessary to comprehensively

regulate the operation and financial affairs of interstate carriers in order to make certain that the transportation needs of the entire country would be most completely served and protected.

Congress Has Covered Every Detail of the Subject so Completely and in Such a Manner as to Manifest Its Purpose to Exercise Its Constitutional Authority and Therefore the Regulating Power of the States to Compel Extensions, Abandonments, Consolidations and Joint Use of Terminal Facilities Has Ceased to Exist and All State Regulations of These Matters Have Been Superseded.

Until these amendments to the Federal statute became effective the Interstate Commerce Commission had no power to regulate interstate carriers in these particulars but by the enactment of this amended law Congress undertook to adopt a "national policy" which contemplates the exercise of Federal power heretofore lying dormant, thereby automatically divesting the several state commissions of power to effect consolidation of terminals and other facilities or the abandonment or extension of the lines of carriers subject to the jurisdiction of the Federal Commission.

Erie R. R. Co. vs. N. Y., 233 U. S. 671, and cases cited.

Houston, East & West Texas Ry. Co., vs. U. S., 234 U. S. 342.

Adams Express Co. vs. Croninger, 226 U. S. 491.

Texas & Pacific Ry. Co. vs. Rigsby, 241 U. S. 33, 41-2.

Northern Pacific Ry. Co. vs. Washington, 222 U. S. 370, 378.

Railroad Comm. of Wisconsin vs. C. B. & Q., 257 U. S. 563.

In deciding the Minnesota Rate Case, the Supreme Court of the United States held that:

> "The power of Congress to regulate commerce among the several states is supreme and plenary. It is 'complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution.'"
>
> *Minnesota Rate Case*, 230 U. S. 352, 398, citing Gibbons v. Ogden, 9 Wheaton, 1.

The Supreme Court further held that:

> "there is no room in our scheme of government for the assertion of state power in hostility to the authorized exercise of federal power. The authority of Congress extends to every part of interstate commerce, and to every instrumentality or agency by which it is carried on, and the full control by Congress of the subjects committed to its regulation is not to be denied by the commingling of interstate and intrastate operations."

State commissions may act in such matters under authority vested in them by state statutes until the Congress has vested the Federal Commission with similar power, and whenever the Federal Govern-

ment undertakes to regulate such matters the power of the state commission is automatically divested.

> "Wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves the control of the other, it is Congress and not the state that is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority and the state and not the nation would be supreme within the national field."
>
> (*Houston, etc. R. Co. v. U. S.*, supra.)

In deciding the case of Akron C. & Y. Ry. Co. vs. U. S., decided February 19, 1923, U. S. Supreme Court Advance Opinions, No. 10308, this court held that the

> "Transportation Act, 1920, introduced into the Federal legislation a new railroad policy. * * * Theretofore, the effort of Congress had been directed mainly to the prevention of abuses; particularly, those arising from excessive or discriminatory rates. The 1920 Act sought to insure, also, adequate transportation service. That such was its purpose, Congress did not leave to inference. The new purpose was expressed in unequivocal language. And to attain it, new rights, new obligations, new machinery, were created. The new provisions took a wide range. Prominent among them are those specially designed to secure a fair return on capital devoted to the transportation service. Upon the Commission new powers were conferred and new duties were imposed."

Mr. Chief Justice Taft, speaking for an unanimous court in deciding the case of *Railroad Commission of Wisconsin, et al., v. C. B. & Q. R. R. Co.*, supra, where the comprehensive amendments to the Federal statute were under review, held that:

> "Congress in its control of its interstate commerce system is seeking in the Transportation Act to make the system adequate to the needs of the country by securing for it a reasonable compensatory return for all the work it does. The states are seeking to use that same system for intrastate traffic. That entails large duties and expenditures on the interstate commerce system which may burden it unless compensation is provided for the intrastate business reasonably proportionate to that for the interstate business. Congress as the dominant controller of interstate commerce may, therefore, restrain undue limitation of the earning power of the interstate commerce system in doing state work. The affirmative power of Congress in developing interstate commerce agencies is clear. *Wilson v. Shaw*, 204 U. S. 24; *Luxton v. North River Bridge Co.*, 153 U. S. 525; *California v. Pacific Railroad Company*, 127 U. S. 1, 39. In such development, it can impose any reasonable condition on a state's use of interstate carriers for intrastate commerce it deems necessary or desirable. This is because of the supremacy of the national power in this field."

The Railroad Commission of the State of California likewise apparently recognizes that the Interstate Commerce Commission has, by the amendments of the Federal statute, been vested

with exclusive jurisdiction in matters relating to the abandonment or extension of lines or the consolidation of terminal facilities.

This statement is supported by the decision rendered by the Commission on April 26, 1921 (Tr. 68), where it was held:

> "The recognition of the necessity that in the future we must have in this country unified railroad terminal development in the larger cities has been definitely incorporated by Congress in the new Transportation Act. It is in that Act also recognized that it will not be sufficient to leave the necessary terminal unification to the carriers alone. *Power is given the Interstate Commerce Commission in the Esch-Cummins Act, to order terminal unification.* This, it seems to us, is a sound and inevitable development. With the present relation between the railroads and the people, whereby the government undertakes to fix rates under a prescribed system, designed to give to the railroads, as nearly as may be, a guaranteed income, in addition to a guaranteed reimbursement of operating expenses, it seems self-evident that every effort must be made to furnish the best possible transportation facilities at the lowest possible cost. * * *"

It therefore appears that the Railroad Commission of the State of California and the highest court of that state have confirmed respondent's understanding of the law.

Petitioner, however, specifies as errors for the reversal of the judgment of a state court that:

> "The California commission has authority under state law * * * to order the three railroad companies to erect a union depot.
>
> The state Court erroneously construed the federal statute amendatory of the Interstate Commerce Act as having deprived the state of this jurisdiction and vested it in the Interstate Commerce Commission.
>
> The state Court failed to give effect to the proviso of Section 1, paragraph 17 of the amended Interstate Commerce Act and to the principle announced in the case of Missouri Pacific Railway Company v. Larabee Flour Mill Company, 211 U. S. 612." (Br. pp. 18, 19.)

Counsel argues that the state's power remains unimpaired and the state commission's order is valid unless the Interstate Commerce Commission makes an inconsistent order.

In other words it is the contention of petitioner that notwithstanding the fact that Congress has vested the Interstate Commerce Commission with the control and supervision of the financial and physical operations of carriers, including the all important questions of extensions and abandonment of their lines, consolidation and joint use of main tracks and terminal facilities, these powers confided to the interstate Commerce Commission, unless actually exercised in a particular case, leave any powers which may be vested in the state commission unimpaired and in full force and effect.

Petitioner contends that the case of *Missouri Pacific Ry. Co. v. Larabee Flour Mills Co.*, 211 U. S. 612, is controlling.

In that case the jurisdiction of the Supreme Court of Kansas was invoked by the Mill Company for a writ of mandate compelling the railroad to discharge its *common law* obligation of switching cars locally between a foreign line and the plant of the Mill Company. The right was not asserted under any State statute nor under any order rendered by a commission or other regulatory body. The refusal of the railroad company to perform this *local switching* "was based solely upon the ground" that certain demurrage charges had not been paid by the Mill Company and not upon the ground "that the service constituted a part of interstate commerce." After its refusal to switch for the Mill Company the railroad continued to perform similar services for other industries and this Court held that the railroad was obliged to treat all industries alike irrespective of any legislative enactment or special mandate from any commission because "the duty arose from the fact that it was a common carrier", and that this obligation, irrespective of legislative action or special mandate, could be enforced by the courts. This Court affirmed "the oft repeated rule that the State in the absence of express action by Congress may regulate matters which *indirectly* affect interstate commerce" and cited authorities in support of the well recognized rule that "the mere grant of such a power *to* Con-

gress would not imply a prohibition on the States to exercise the same power. That it is not the mere existence *of* such a power but its exercise *by* Congress which may be incompatible with the exercise of the same power by the States and that the States may legislate in the *absence* of Congressional legislation." The Court further held that merely because Congress had vested the Interstate Commerce Commission with "a large measure of control over interstate commerce," nevertheless in the absence of *specific* action by Congress or the commission the control of the State over these *merely incidental* matters remains undisturbed." The Court inferentially held that the switching involved was an "incidental matter" and that "this common law duty the State in a case like the present may, at least in the absence of Congressional action, compel a carrier to discharge."

It may be noted that the dissenting opinion by Mr. Justice Moody, with which Mr. Justice White concurred, and with which Mr. Justice Holmes stated he was inclined to agree, held that assent could not be given to the proposition that although Congress had vested the Federal Commission with authority to deal with the exact situation presented this fact was immaterial because the Commission had taken no action.

But for the purposes of this argument we will accept the views expressed in the majority opinion as settled law. Nevertheless it is our contention

that the Larabee case does not support petitioner's conception of the law but is wholly inapplicable because under the facts set forth in that decision it appears that the Court was dealing with what the opinion aptly styled "regulations of a local character", namely, a local switching service, which was characterized by the court as "incidental matters", whereas in the case at bar we are dealing with orders requiring three transcontinental railroads engaged largely in interstate commerce to expend millions of dollars in extending and abandoning their main lines, and enlarging, abandoning and consolidating their terminal facilities.

The principle of the Larabee Case has no application here because of the Transportation Act itself Congress has put an inhibition upon the carriers, coupled with severe penalties, prohibiting them from extending their lines, from abandoning lines, from consolidating lines, except upon permission first obtained from the Interstate Commerce Commission. By such action Congress has clearly taken away from any other body except the Interstate Commerce Commission power to compel the carriers to do these very things, whereas, in the Larabee Case, Congress had merely at the most conferred upon the Interstate Commerce Commission general power upon the complaint of shippers to enter specific orders regulating the practices of carriers relating to switching.

Congress Has "Acted" by Exercising Its Constitutional Authority in Regulating the Matters Covered by the Commission's Orders and Power Thus Exercised Is Incompatible with the Exercise of the Same Power by the States.

It can not be held that the orders of which complaint is made here are merely "local" or "incidental", but it is apparent that the orders directly interfere with and burden interstate commerce, and that irrespective of any action by the Commission, Congress has "specifically acted" in adopting the amendments to the Interstate Commerce Act of 1920.

In deciding the case of *Southern Ry. Co. v. Railroad Comm. of Indiana*, 236 U. S. 439, 446-8, the Court held:

> "The test, however, is not whether the State legislation is in conflict with the details of the Federal law or supplements it, but whether the State had any jurisdiction of a subject over which Congress had exerted its exclusive control."

The question to be determined here, as in the case of *Southern Ry. Co. v. Reid*, 222 U. S. 436, is "to what extent and how directly must it (the power of Congress) be exercised to have * * *" the effect of superseding the concurrent power of the State which might be exercised in the absence of Congressional legislation.

After quoting the rule announced in the Larabee case the Court held that "the principle of that case, therefore, requires us to find specific action either by Congress in the Interstate Commerce Act or by the Commission covering the matters which the statute * * * attempts to regulate." "Does it (the action by Congress) * * * take control of the subject-matter and impose affirmative duties upon the carriers which the State cannot even supplement? In other words, has Congress taken possession of the field?"

In the case of *Southern Ry. Co. v. Reid & Beam*, 222 U. S. 444, 447, referring to the preceding decision in the Reid case, the Court held that "there need not be directly 'inhibitive congressional legislation,' but congressional legislation which occupies the field of regulation and thereby excludes action by the State."

The Larabee case was again cited by this Court in deciding the case of *M. K. & T. Ry. Co. of Texas v. Harris*, 234 U. S. 412, 417, and, as in the Reid case, emphasis was laid upon the fact that interstate commerce was only "incidentally affected" and was not "directly burdened or interfered with" by the judgment of the State Court enjoining upon the carrier the duty of discharging its common law obligation. It was held by the Court in the case last cited that the State statute only dealt with a question of costs "respecting which Congress had

not spoken" and that "only until Congress did speak the State might enforce its statutes which only 'incidentally' affected interstate commerce." Where, however, a State statute or an order of a State commission does not merely "incidentally" affect interstate commerce, but does directly interfere with or burden interstate commerce, this Court has uniformly held that the authority sought to be exercised by the States either through the medium of their administrative or judicial tribunals must fall and the carriers relieved from complying with any such orders.

> "When Congress acts in such a way as to manifest its purpose to exercise its constitutional authority the regulating power of the State ceases to exist."

Erie R. R. Co. v. N. Y., 233 U. S. 671.

Minnesota Rate Cases, 230 U. S. 352, 399-412.

Houston, East & West Texas Ry. Co. v. U. S., 234 U. S. 342.

N. Y. C. R. R. Co. v. Hudson County, 227 U. S. 248, 264.

Second Employers' Liability Cases, 223 U. S. 47-8, 53-55.

Southern Railroad Co. v. Railroad Commission of Indiana, 236 U. S. 439, 446-448.

A. T. & S. F. Ry. Co. v. Harold, 241 U. S. 371, 378-379.

T. & P. Ry. Co. v. Rigsby, 241 U. S. 33, 41-42.

Southern Ry. Co. v. Prescott, 240 U. S. 632, 639-640.

Atlantic Coast Line R. R. Co. v. Georgia, 234 U. S. 280, 291-4.

Pa. R. R. Co. v. Public Service Commission, 250 U. S. 556, 569.

Spokane & Inland R. R. v. Campbell, 241 U. S. 497, 509.

Boston & Maine R. R. v. Hooker, 233 U. S. 97, 110.

A. T. & S. F. Ry. v. Robinson, 233 U. S. 173-180.

Seaboard Air Line Ry. v. Horton, 233 U. S. 492, 501.

Taylor v. Taylor, 232 U. S. 363, 368.

St. Louis, etc. Ry. Co. v. Seale, 229 U. S. 156, 158.

St. Louis, I. M. & S. Ry. Co. v. Hesterly, 228 U. S. 702, 704.

Michigan Central R. R. Co. v. Vreeland, 227 U. S. 59, 66-7.

St. Louis v. Edwards, 227 U. S. 265, 268-9.

To borrow the language used by this Court in deciding the case of *Adams Express Co. v. Croninger*, 226 U. S. 491:

> "Almost every detail of the subject is covered so completely that there can be no rational doubt but that Congress intended to take possession of the subject and supersede all State regulation with reference to it."

Railroad Comm. of Wisconsin v. C. B. & Q. R. R. Co., supra.

Akron C. & Y. Ry. Co. v. U. S., supra.

The language employed by this Court in deciding the case of *Northern Pacific v. Washington*, 222 U. S. 370, 378, aptly states the rule to be followed in determining whether *Congress* has acted.

> "It is elementary, and such is the doctrine announced by the cases to which the court below referred, that the right of a State to apply its police power for the purpose of regulating interstate commerce, in a case like this, exists only from the silence of Congress on the subject, and ceases when Congress *acts* on the *subject or manifests its purpose to call into play its exclusive power.* This being the conceded premise upon which alone the state law could have been made applicable, it results that as *the enactment by Congress* of the law in question was an assertion of its power, *by the fact alone of such manifestation* that subject was at once removed from the sphere of the operation of the authority of the State."

See also *Gulf, etc. Ry. Co. v. Hefley*, 158 U. S. 98, 104-5.

The most cursory examination of the Interstate Commerce Act as now amended, particularly Subdivision 15 of Section 1; Subdivisions 18 to 22, inclusive, of Section 1; Subdivision 4 of Section 3; Subdivision 4 of Section 5; section 15a, and Section 20a, will bear out the statement that the powers which have been confided to the Federal Commission are incompatible with the exercise of the same powers by the states. This court characterized the provisions found in Section 15a of the act as "the most novel and most important features of the

act * * *," as it requires the Commission to prescribe rates so as to enable carriers engaged in interstate commerce, as a whole or in groups selected by the Commission, to earn an aggregate annual net railway operating income equal to a fair return upon the aggregate value of the railway property used in transportation, and sought to avoid excessive incomes accruing to the carriers better circumstanced by using one half of the excess for loans to other carriers. The provisions of Subdivision 4 of Section 5 are also novel and make a "radical departure" in enjoining upon the Commission the duty "as soon as practicable" to adopt a plan "for the consolidation of the railway properties of the continental United States into a limited number of systems."

> "The act further put under the control of the Interstate Commerce Commission, 1st, the issuing of future railroad securities by the interstate carriers; 2nd, the regulation of their car supply and distribution and the *joint use of terminals;* and, 3rd, their *construction* of new lines, and their *abandonment* of old lines. * * * * * * * *
>
> The new measure imposed an affirmative duty on the Interstate Commerce Commission to fix rates and to take other important steps to maintain an adequate railway service for the people of the United States. This is expressly declared in Section 15a to be one of the purposes of the bill."

Railroad Comm. of Wisconsin v. C. B. & Q. R. R. Co., supra.

The policy declared by Congress is national in its scope and in administering the act the Commission is enjoined to give consideration to the transportation needs of the country and the "necessity of enlarging facilities" to "best promote the services in the interest of the public and the commerce of the people" and to this end Congress has established the Railroad Labor and Adjustment boards, has vested the Federal Commission with power relating to the raising of capital by new government loans, loans from the general railroad contingent fund, the issuing of new securities, consolidation of railroads into a limited number of systems, joint use of terminals, and the interchange of traffic.

It is for the Federal Commission to say whether there is necessity for the enlargement of facilities and to determine whether conditions and betterments are necessary or whether the amounts expended therefor are reasonable, whether the management of the interstate carriers has been honest, efficient, and economical, to determine what expenditure shall be charged, and capital account, and operating expenses. The declared national policy of Congress can not be carried into effect but will be hampered and retarded, and interstate commerce burdened if not destroyed, and the transportation systems of the nation demoralized, if the states are to be left free to enter orders such as these.

The States Can No More Supplement the Requirements of the Federal Statute than They Can Annul Them.

Counsel for petitioner in attempting to uphold the jurisdiction of the State Commission suggest in the brief filed in support of petition for the writ, page 29, that if in "partial compliance with the State Commission's orders it should become necessary to invoke the jurisdiction of the Interstate Commerce Commission in connection with any part of the work, such as the joint use of tracks or for the issuance of securities" * * * "there is no reason why application therefor can not be made to the Interstate Commerce Commission at that time." In effect they are suggesting the concurrent jurisdiction of the Federal and State Commissions. Any such contention is opposed to the authorities already cited.

In deciding the case of *Southern Ry. Co. v. Railroad Commission of Indiana*, 236 U. S. 439, 446-448, the Court cites the case of *Prigg v. Commonwealth of Pennsylvania*, 16 Pet. 539, 617, where it was held:

> "If Congress have a constitutional power to regulate a particular subject, and they do actually regulate it in a given manner, and in a certain form, it cannot be that the state legislatures have a right to interfere; and, as it were, by way of complement to the legislation of Congress, to prescribe additional regulations, and what they may deem auxiliary provisions for the same purpose."

In deciding the case of *Erie R. R. Co. v. N. Y.*, 233 U. S. 671, it was held that notwithstanding a Federal statute did not become operative until a year after its adoption, that nevertheless the State could not in the interim enforce similar legislation upon the ground that "the State had simply supplemented the action of the Federal authorities." It was held that there may not be a division of the field of regulation "but an exclusive occupation of it when Congress manifests a purpose to enter it."

It was held in the case of *Pennsylvania R. R. Co. v. Public Service Commission*, 250 U. S. 566, 569:

> * * * * "When the United States has exercised its exclusive powers over interstate commerce so far as to take possession of the field, the States no more can supplement its requirements than they can annul them." Citing cases.

The rule is well stated in the case of *Charleston & Western Carolina Ry. Co. v. Varnville Furniture Co.*, 237 U. S. 597, 604.

> "When Congress has taken the particular subject-matter in hand coincidence is as ineffective as opposition, and a state law is not to be declared a help because it attempts to go farther than Congress has seen fit to go." Citing cases.

Petitioner has argued, page 19 of brief filed in support of petition, to the effect that the California statute is broader in its scope than the Interstate Commerce Act because no provision is contained in the Interstate Commerce Act authorizing the erec-

tion of "union passenger depots." But as has already been shown, it will become necessary in erecting a union passenger depot to extend and abandon main lines and terminal facilities of respondents, consolidate their terminal facilities and provide for the interchange of traffic, which are particular subjects of regulation which now have been confided to the Federal Commission. Under the authorities last cited it can not be held that even though the California statute is susceptible to the interpretation placed upon it by petitioner's counsel, and "attempts to go farther than Congress has seen fit to go" it thereby is resurrected and given efficacy. As was said in the case of *Gulf etc. Ry. Co. v. Hefly, supra*:

> "It is unnecessary to pursue this discussion further. The State statute and the national law operate upon the same subject-matter, and prescribe different rules concerning it. The national law is unquestionably one within the competency of Congress to enact under the power given to regulate commerce between the States. The State statute must, therefore, give way."

Construction Placed Upon the Transportation Act by State Courts.

The courts of several of the States have, since the Interstate Commerce Act was amended in 1920, had occasion to consider the relative jurisdiction of the Interstate Commerce Commission and State commissions as affected by these amendments.

The case of *State ex rel, etc. v. Atlantic Coast Line R. R. Co., Florida*, 87 Southern Reporter, 773, decided February 15, 1921, involved the construction of the Transportation Act, 1920, and involved the jurisdiction of the State Commission to require a railroad to make a physical connection between its lines and the wharf operated by the Clyde Steamship Company. The Supreme Court of Florida had in an earlier decision required the carrier to make such connection under the provisions of the Florida statute but upon its attention being directed to the provisions contained in the Transportation Act, vesting the Interstate Commerce Commission with power to compel carriers to make such physical connections between their lines and water carriers, held that the

> "entire and exclusive jurisdiction over the matter of requiring physical connection between rail and water carriers has been given by Congress to the Interstate Commerce Commission, and there is no field for the operation of State laws, or control by the State Railroad Commission, over the same subject-matter."

> "Until Congress gave to the Interstate Commerce Commission entire and exclusive jurisdiction over the matter of physical connection between rail and water carriers, the State had full power and jurisdiction over the subject; but when Congress exercised the power, and lodged the entire and exclusive jurisdiction over it in the Interstate Commerce Commission, the right of the State over the same subject-matter was extinguished."

At page 778 of the opinion the Court cites the case of *Missouri Pacific Ry. Co. v. Larabee Flour Mills Co.*, supra, and distinguishes the case upon the ground that in the Larabee case Congress had not expressly vested the Interstate Commerce Commission with the "power and duty with regard to switching service" and held that if such authority had been vested in the Federal Commission to the same extent that it had vested the Commission with power to require physical connections between rail and water lines, that the Supreme Court of the United States would have held otherwise.

Congress has, by Subdivision 4 of Section 3 of the amended act, expressly vested the Interstate Commerce Commission with power to require carriers owning terminal facilities to permit the use by other carriers of such terminal facilities including the main track or tracks for a reasonable distance outside of such terminals.

We direct the Court's attention to the fact that there is no express provision in the Public Utilities Act of California requiring one railroad to admit another to the joint use of its private property. If any such power is found it is in Section 41 of the Act, which merely authorizes the California Commission to admit another carrier to the joint use of its tracks situated on, over or under any street or highway. No power is conferred upon the California Commission to compel the joint use of

tracks where they are situated on privately owned right of way, but even though such power had been conferred the Federal statute would nevertheless be controlling.

The Supreme Court of the State of New York has likewise held that an order of the Public Service Commission of that State requiring carriers to make connections between their lines and to provide such tracks and facilities as "may be necessary to establish and furnish adequate and convenient interchange of freight * * *" is repugnant to the provisions of paragraph 2 of Section 3 of the Interstate Commerce Act, as amended in 1920, requiring carriers to provide for the interchange of traffic between their respective lines, and that the Congressional Act "excludes the jurisdiction of the State Public Service Commission to make the same requirements of interstate carriers under the principle that Congress having delegated to the Interstate Commerce Commission power to deal with the subject matter, an exercise of like power by the State is thereby superseded."

> *People v. Public Service Comm.*, 135 N. E. 195, 196, 197.

The case of *People, ex rel New York Central R. R. Co. v. Public Service Commission*, 190 N. Y. Supplement, 636, holds that the Transportation Act as amended,

> "not only gives the Interstate Commerce Commission power to establish physical connection

> between lines of rail carriers and docks, but also to direct rail and water carriers, singly or jointly, to construct and connect with lines and to determine and prescribe the terms and conditions of operating such connections, and that thereby "such matters are entirely removed from the State and its Public Service Commission has no authority to order such connections."

This decision was affirmed in a memorandum opinion by the New York Court of Appeals, 134 N. E. 590, that court simply saying that the subject matter of the controversy had by the Transportation Act of 1920 been relegated to the Interstate Commerce Commission. Thereupon application was made to the Supreme Court of the United States for a writ of certiorari, which application was denied without an opinion (258 U. S., 621).

The latest case which has been brought to our attention is that of *Shealy, et al. v. Southern Ry. Co.*, decided by the Supreme Court of the State of South Carolina, April term, 1923 (opinion not yet published), involving the jurisdiction of the Railroad Commission of South Carolina to compel the railway company to construct certain station sheds at a station on its lines. The Court refers to previous decisions rendered by it sustaining the power of the State Commission to enter such orders, but states that the cases cited are not controlling by reason of the fact that:

> "The Transportation Act of 1920 effected a radical departure, and introduced into Federal legislation a new railroad policy. It has placed the entire control over rates, properties, tracks, terminals and facilities of railroads engaged in interstate commerce, in and under the jurisdiction of the Interstate Commerce Commission."

The Court supports its decision by the case of *Akron C. & Y. Ry. Co. v. U. S.*, cited therein, and cites with approval the decision rendered by the Supreme Court of the State of California in the case at bar. The Court further held:

> "Another consideration is conclusive of the purpose of the Act to control the matter of non-productive, additional facilities and terminals, and having pre-empted this field, all regulation by the States is interdicted. This matter is not only subjected to the control of the I. C. Commission, but it is so inter-related with the purpose of the Act in supervising transportation facilities and in fixing rates, that interference by the States therewith necessarily affects interstate commerce."

The Court then goes on to analyze the amendments of 1920 to the Federal statute and holds that the policy announced by Congress will be thwarted and will result "in the complete breaking down and ultimate failure of the Constitutional purpose * * *" if the States are permitted to continue to exercise the powers relating to the enlargement and extension of transportation facilities by interstate carriers.

We have been able to find but two decisions rendered by state courts where a rule contrary to that announced by the Supreme Court of the State of California is sustained. That of *C. R. I. & P. Co. v. State of Oklahoma,* 217 Pac. Rep. 147, where it was held that, notwithstanding the amendments made to the Transportation Act, 1920, the State of Oklahoma still might, through its Corporation Commission, require railroads engaged in intrastate and interstate commerce to provide adequate passenger facilities "except when such orders are inconsistent with some lawful order of the Interstate Commerce Commission or when said orders amount to an unjust discrimination against interstate commerce or amount to an unjust and unreasonable burden on interstate commerce and would interfere with the railroads in complying with their obligations in relation to interstate commerce." This case was decided prior to the announcement of the decision by this court in the Akron case. The state court reached the conclusion that by the amendments to the Federal Statute, Congress did not intend to occupy the field of regulating interstate commerce to the extent of preventing the state commissions from compelling carriers to enlarge their passenger facilities unless the Interstate Commerce Commission had previously entered such an order. The court gives no consideration to the broad scope of Federal regulation or the adoption of the new Congressional policy as so thoroughly outlined in the case of *Akron C. & Y. Ry Co. v. U. S.*, and

Shealy et al. v. Southern Ry. Co., supra, but rests its decision largely upon the proviso of Subdivision 17 of Section 1 of the act. It would appear that the Oklahoma court, in an effort to sustain the jurisdiction of the State Corporation Commission, has placed a narrow and strained construction upon the amended Interstate Commerce Act and has given no consideration to the conflict which would inevitably result from such construction of the Federal statute. Orders such as were entered by the Oklahoma Commission would directly interfere with and burden interstate commerce.

The Supreme Court of North Carolina has rendered a decision, the full text of which is not at hand, and we are therefore unable to review this decision at this time.

The foregoing authorities make it apparent that the state courts where questions similar to those in the case at bar have been raised have, with the exceptions noted, held in accordance with the California court that the statutes of their respective states have been superseded and the powers with which their Public Service Commissions were formerly vested have been circumscribed and superseded by the adoption of the new national railroad policy.

The Decisions of the Interstate Commerce Commission, Construing the 1920 Amendments to the Interstate Commerce Act, are in Harmony with the Decision of the Supreme Court of California.

In deciding the case of *T. & P. Ry. Co. v. Abilene*, 204 U. S. 426, 433, it was held that the conclusion reached by the court was "greatly fortified * * * by the * * * reports and decisions of the Interstate Commerce Commission" and it therefore may be well in passing to direct the court's attention to the numerous decisions rendered by the Interstate Commerce Commission wherein the Commission has assumed jurisdiction of matters involving questions arising under the amendment to the Interstate Commerce Act of 1920.

In construing the amendment to Section 3 of the Act relating to the interchange of traffic between connecting carriers, the Commission has held:

> "As amended by the Transportation Act this provision of the law gives us a direct and explicit power to require the use by one carrier of the 'terminal facilities' of another carrier upon certain conditions. It is apparent that the policy of Congress was thus reversed."
>
> *Hastings Commercial Club et al. v. C. M. & St. P. Ry. Co.*, 69 I. C. C. 489, 493.

It will be found that in rendering its decision in the Cleveland Passenger Terminal Case, decided August 21, 1921, 70 I. C. C. 342; decision on re-

hearing same case, December 6, 1921, 70 I. C. C. 659; the Commission authorized the carriers to construct a joint passenger terminal at Cleveland, after giving consideration to the question whether the terminal facilities were required to meet the demands of interstate traffic, whether the location of the union terminal would serve the convenience of interstate passengers, *whether the cost of financing the construction of the terminal was such as to unduly burden interstate commerce.* The Commission reviewed the entire situation relating to all the business of the carriers, state and interstate.

In determining the questions raised by the *Application of Illinois & Kentucky R. R. Co.* to construct line between Edgewood and Metropolis in the State of Illinois, 82 I. C. C. 100, 105, it was held by the Commission: "In our consideration of applications under paragraph 18 of Section 1 of the Interstate Commerce Act we are concerned primarily with the requirements of public convenience and necessity."

The Federal Commission has asserted jurisdiction over these subjects in granting the certificate authorizing Oregon Short Line Railroad to construct a line in Idaho, a distance of 2.66 miles, under the provisions of paragraph 18 of Section 1.

82 I. C. C. 133;
Abandonment of Caddo & Choctaw Railroad,
82 I. C. C. 90.

The Interstate Commerce Commission has constantly exercised its jurisdiction to grant authority to interstate railroads subject to its jurisdiction to either construct or abandon short stretches of line.

> Application for abandonment of branch line by Great Northern denied. 72 I. C. C. 25.
>
> Application for construction of line in Michigan by Michigan Northern denied. 72 I. C. C. 21.
>
> Application of C. & A. R. R. Co. for authority to construct line of railroad granted. 72 I. C. C. 1.
>
> Application of Silverton Ry. Co. for authority to abandon its line of railroad granted. 72 I. C. C. 13.
>
> Application of Virginia & Western Ry. Co. for authority to extend its line of railroad granted; permission to retain excess earnings denied. 72 I. C. C. 55.

It thus appears that the Interstate Commerce Commission has placed a practical construction upon the amendments of 1920, has asserted and exercised jurisdiction over these matters, and that the carriers which are subject to the jurisdiction of that Commission have believed it necessary to invoke the jurisdiction of the Commission to obtain these permissive orders before making extensions or abandoning portions of their line and terminal facilities, even though they involve but short stretches of track. The carriers could not proceed otherwise because of the severe penalties imposed

by the amendments for failure to obtain permission of the Federal Commission before extending or abandoning lines or consolidating terminal facilities.

THE PROVISO FOUND IN SUBDIVISION 17 OF SECTION 1 OF THE TRANSPORTATION ACT OF 1920 DOES NOT RESERVE TO THE STATE POWER TO MAKE THE ORDERS HERE INVOLVED.

That proviso reads as follows:

> "Provided, however, that nothing in this act shall impair or affect the right of a state in the exercise of its police power to require just and reasonable freight and passenger service for intrastate business, except in so far as such requirement is inconsistent with any lawful order of the Commission made under the provisions of this act."

The proviso is contained in the paragraph which makes provision for the Commission to act through such agencies as it shall designate to carry out its orders relating to "car service" as defined in paragraph 10 of the section, and in cases of emergency as provided in paragraph 16 of the section, and where carriers are unable to transport the traffic offered as provided in paragraph 17 of the section, the remaining part of section 17 relating to the penalties which may be imposed by the Courts for failure of a carrier to follow its directions as to car service and to the matters referred to in paragraphs 15 and 16.

It would appear that the proviso relates exclusively to these matters and the only practical construction which can be placed on the proviso is that it merely reserves to the states the right to require just and reasonable passenger service for *intrastate* business in these particulars.

In any event the proviso is not susceptible to the construction that it is operative in cases such as this, where the Commission's orders directly interfere with and burden a large volume of *interstate* traffic. Nor will it bear an interpretation which will prevent the Interstate Commerce Commission from discharging its affirmative duty "to maintain an adequate railway system service for the people of the United States" which is "expressly declared in Section 15a to be one of the purposes of the bill."

Railroad Comm. of Wisconsin v. C. B. & Q., supra.

This proviso neither confers power on the state authorities, nor takes power from the Interstate Commerce Commission. It declares a rule of construction; and it is the same rule which courts have followed and which they would have adopted in construing the Transportation Act without the proviso. For surely no one would assert that the amended act without the proviso deprives a state of power

to require carriers to furnish equipment and move shipments and passengers from point to point in that state with reasonable dispatch and furnish all necessary facilities for handling such *local* business.

But the proviso is strictly limited to this local intrastate business. It does not even save to the state the right to make orders which indirectly or incidentally affect interstate commerce where such orders are made under the police powers of the state; as for instance the number of local trains which shall be run, the times and speeds at which such trains shall be operated, and kindred matters. Those regulations must rest now, as heretofore, on the general police powers of the state.

But in the case at bar the action of the state is not limited to intrastate business. The purpose of the orders would not have been achieved if so limited. Los Angeles is the most populous city in the western half of the United States. And these orders run against three transcontinental lines, the passenger traffic of each of which, in and out of Los Angeles, is chiefly interstate. Here is the western terminal of the Salt Lake Line, now a part of the Union Pacific System; the chief western terminal of the Atchison Line; and one of the main terminals of the Southern Pacific Line.

This is no matter of a waiting room at a way station but of a great new edifice to accommodate all the passengers, mail, express and baggage arriving and departing at one of the largest cities in the country.

It would be folly for the state to say to these carriers: You must receive and set down all your intrastate passengers at Los Angeles on the platform of a union station. Unless the state may control the handling of the passenger traffic, interstate as well as intrastate, and may order that all the business should be handled at one station, including mail, passengers, express and baggage, the whole purpose of the order fails. For the State Commission aims by its order to end the delivery and receipt of passengers, baggage, etc., at the existing stations, especially the large and comparatively new Southern Pacific station.

The Interstate Commerce Commission could not regulate the transportation of interstate carriers from a national standpoint if state commissions were permitted to interfere with and burden interstate commerce to the extent such traffic would be affected by orders such as these, and the Congressional policy to place the entire control of railroad properties, rates, finances, operation, terminals, and facilities under the jurisdiction of the Interstate Commerce Commission would be rendered

nugatory and the Interstate Commerce Commission would be impotent to carry into effect the provisions of Section 15a of the act, and of Subdivision 4 of Section 5, which enjoins upon the Interstate Commerce Commission the duty "as soon as practicable" to "adopt a plan for the consolidation of the railway properties of the United States into a limited number of systems."

When consideration is given to the "new national policy" sought to be accomplished by Congress in adopting the comprehensive amendments of 1920, the only reasonable and practical construction which can be placed upon the proviso without doing violence to the declared policy of Congress is that the several states may issue necessary orders "to require just and reasonable freight and passenger service for *intrastate* business * * *" in cases where such orders do not directly affect or interfere with or burden interstate commerce.

Counsel quotes from the Congressional Record (brief for petition, pp. 30, 31) to aid in construing the amended act, but the language used in the act is clear and unequivocal and in construing the amended act this court has held:

> "Great stress is put on the legislative history of the Transportation Act to show that

the bill was not intended to confer on the Commission power to remove any discrimination against interstate commerce involved in a general disparity between interstate and intrastate rates. Committee reports and explanatory statements of members in charge made in presenting a bill for passage have been held to be a legitimate aid to the interpretation of a statute which in its language is doubtful or obscure. (Citing cases.) But when taking the act as a whole the effect of the language used is clear to the court, extraneous aid like this cannot control the interpretation. (Citing cases.) Such aids are only admissible to solve doubt and not to create it."

Railroad Comm. of Wisconsin v. C. B. & Q. et al., supra.

In the event the interpretation placed upon this proviso by counsel in their brief in support of petition, pp. 42, 43, were to be adopted, it would result in the absurd conclusion that after Congress has delegated to the Interstate Commerce Commission the comprehensive power to permit carriers to extend or abandon lines, to permit and require the consolidation of terminal facilities and the joint use of facilities, provide for the consolidation of the lines of interstate carriers into separate systems, to determine the percentage of return constituting a fair return upon the value of the carrier's property to permit the issuance of securities,

the power so confided to the Federal Commission should lie dormant and leave the states free to legislate directly or through the medium of commissions, relative to all of these matters until the Interstate Commerce Commission itself determined directly or by inference that a particular state statute should be superseded. Until the Interstate Commerce Commission had completed consolidation of the lines of the interstate carriers throughout the United States, had completely regulated their finances in all particulars, had fully acted in determining what extensions, abandonments and joint use of facilities should be permitted, at every point in the United States served by the lines of an interstate carrier, the state commissions, under petitioner's conception of the law, would be free to act, ordering the carriers to expend millions of dollars in these particulars and requiring them to enlarge and consolidate their terminal facilities in a manner which in all human probability would not conform to the final orders entered by the Federal Commission. It is so apparent that any such interpretation of the statute would result in endless confusion and great waste that to state the proposition is to affirm it. As was stated by the court in the case of *Shealy et al. v. Southern Ry. Co.*, supra:

> "The effect of the Transportation Act of 1920 is to limit the power of the states over interstate commerce to an exceedingly circumscribed sphere. They have control of purely

> internal affairs, but that control in so far as it affects interstate carriers must be exercised in a manner that does not project the will of the particular state into other states of the Union. Stone v. F. L. & T. Co., 116 U. S. 334."

In deciding the case of *Adams Epress Co. v. Croninger*, 226 U. S. 491, this court, in speaking of the proviso found in the Carmack Amendment, held:

> "But it has been argued that the non-exclusive character of this regulation is manifested by the proviso of the section, and that state legislation upon the same subject is not superseded, and that the holder of any such bill of lading may resort to any right of action against such a carrier conferred by existing state law. This view is untenable. It would result in the nullification of the regulation of a national subject and operate to maintain the confusion of the diverse regulation which it was the purpose of Congress to put an end to."

This rule is particularly applicable to the case at bar for the reason that in the event the construction for which petitioners contend were placed upon the proviso, paragraph 17 of Section 1, it would not only "result in the nullification of the regulation of a national subject and operate to maintain the confusion of the diverse regulations which it was the purpose of Congress to put an end to," but would "directly interfere with and burden interstate commerce to such an extent as to actually destroy it."

We cannot better express our views than to quote from the Wisconsin case, supra, page 588, where this court, speaking of the "specific proviso of the original Interstate Commerce Act, repeated in the amending acts, that the Commission is not to regulate traffic wholly within a state," held that:

> "Commerce is a unit and does not regard state lines, and, while under the Constitution, interstate and intrastate commerce are ordinarily subject to regulation by different sovereignties, yet, when they are so mingled together that the supreme authority, the Nation, cannot exercise complete effective control over interstate commerce without incidental regulation of intrastate commerce, such incidental regulation is not an invasion of state authority or a violation of the proviso."

The Interstate Commerce Commission Has Taken Jurisdiction and Acted Respecting the Identical Subjects Embraced Within the California Commission's Orders.

Counsel for petitioner argue, original brief p. 33, that the "proviso found in paragraph 17 of Section 1 is in effect a Congressional enactment of the principle announced * * *" in the Larabee case, "namely, that, even when Congress has entered a particular field of interstate commerce and has authorized the Interstate Commerce Commission to exercise jurisdiction therein, nevertheless, unless the matter is to be handled by *general rule or regulation*, the states may continue to act as to particular situations until the Interstate Commis-

sion *takes action* as to such particular situations," thereby conceding that in the event the Interstate Commerce Commission has "taken action" upon the subject of the California Commission's orders the power of the State Commission is superseded and its orders have no efficacy.

If it were held that under the ruling of the Larabee case, or by virtue of the proviso found in Subdivision 17 of Section 1 of the act, the power of the California Railroad Commission to enter these orders continued until the Interstate Commerce Commission had "taken action" on the same subject matter, we find that the facts compel the conclusion that the state statute and powers sought to be exercised thereunder by the California Commission have nevertheless been superseded.

The Interstate Commerce Commission has actually "taken action" in issuing orders on the eighth day of July, 1921, after formal hearings "In the matter of applications under paragraphs 18 to 21, inclusive, Section 1, of the Interstate Commerce Act for certificate of public convenience and necessity for the construction or extension of lines of railroad, and applications under paragraph 18, Section 15a, of said act for permission to retain the excess earnings of newly constructed lines of railroad," and "In the matter of applications under paragraphs 18 to 21, inclusive, Section 1, of the

Interstate Commerce Act for certificate of public convenience and necessity authorizing the abandonment of lines of railroad or the operation thereof."

It, therefore, appears that "the matter is one to be handled by general rule or regulation * * *" and that "the Interstate Commerce Commission has taken action as to such particular situations * * *" referred to at page 3 of brief for petitions.

These orders entered by the Interstate Commerce Commission are binding upon the carriers and upon failure to comply therewith or to observe the provisions of the statute relating to extensions or abandonments, carriers engaged in interstate commerce would subject themselves to the imposition of the severe penalties prescribed by the act.

In the very cases under consideration, as is stated in the motions to advance, on file herein, "*the Interstate Commerce Commission is also confronted with the same question of jurisdiction which is now before this Honorable Court for final determination. After the decision by the Supreme Court of California, the City of Los Angeles filed a complaint before the Interstate Commerce Commission invoking its powers to order the erection, by the three railroads in question, of a union passenger depot in Los Angeles.*"

It may be added that since these motions to advance were filed the Interstate Commerce Commis-

sion in the case referred to in the motions, City of Los Angeles, Complainant, v. L. A. & S. L. R. R. Co. et al., Defendants, I. C. C. No. 14778, has acted upon the complaints filed therein and to which references were made in the motions, by conducting and concluding a formal hearing of the case, Commissioner Mr. Clyde B. Aitchison presiding, and wherein the California Railroad Commissioner, the petitioner now before this court, entered its appearance and participated in the proceedings, which involved precisely the *identical questions* that were presented to the Railroad Commission of the State of California in the cases now under review here.

The following authorities sustain the propriety of directing this court's attention at this time to the general orders entered by the Interstate Commerce Commission and to the action taken by that Commission in the case now pending before it, involving the identical questions determined by the California Commission in its decisions and orders, so as to avoid useless circuity of proceedings.

Dakota County v. Glidden, 113 U. S. 222;
Ridge v. Manker, 132 Fed. 599;
Kimball v. Kimball, 174 U. S. 158;
Gulf, etc. Ry. Co. v. Dennis, 224 U. S. 503.

ISSUES UNDECIDED BY THE SUPREME COURT OF THE STATE OF CALIFORNIA

We have argued that this court should only consider and undertake to decide the question determined by the Supreme Court of the State of California, which is the sole ground upon which petitioners have rested their petitions for writs of certiorari.

Nevertheless as counsel for petitioners have argued these other questions in their brief, we are moved by caution to incorporate an argument relating to them.

This Court May Examine the Entire Record, Including the Evidence, to Determine Whether Respondents' Constitutional Rights Claimed by Respondents Have Been Denied.

In the event that this court undertakes to determine the question whether the orders entered by the California Railroad Commission are unsupported by any evidence or are contrary to the evidence, it will be guided by the provisions of the California statute, relating to review of Commission's orders. Section 67 of the Public Utilities Act of California provides that, after the denial of an application for rehearing, "the applicant may apply to the Supreme Court of this state for a writ of certiorari or review * * * for the purpose of having the lawfulness of the original order or decision, or the order or de-

cision on rehearing, inquired into and determined * * *. The review shall not be extended further than to determine whether the Commission has regularly pursued its authority including a determination of whether the order or decision under review violates any right of the petitioner under the Constitution of the United States or of the State of California."

In the leading case of *Pac. Tel. & Tel. Co. v. Eshelman*, 166 Cal. 640, 694, the Supreme Court of the State of California held:

> "This court has expressly held that the clause 'whether the tribunal has regularly pursued its authority' is the equivalent of 'whether it has exceeded its jurisdiction'."

In deciding the case of *Marin Water Co. v. Railroad Commission of the State of California*, 171 Cal. 706, 713, the California court held, in construing Section 67 of the Public Utilities Act:

> "There is also a provision excluding questions of fact from review. Notwithstanding this, however, the law remains that when a finding or conclusion of fact is based upon uncontradicted evidence its accuracy usually becomes a mere question of law and in that event the question may be reviewed if it goes to the jurisdiction * * *."

The California court affirmed this rule in deciding the case of *Allen v. Railroad Commission*, 179 Cal. 68, 74:

> "When the question, ever one of mixed law and fact, goes, as here, to the jurisdiction itself, * * * to say that the determination of the commission upon this matter is final and conclusive and is not subject to review, is the equivalent of denying to a petitioner a hearing upon a right carefully preserved to him by the language of Section 67 itself—a hearing and a determination of whether the order and decision under review 'violates any right of the petitioner under the constitution of the United States or of the state of California'." (Citing cases.)

Petitioners are not suggesting that the court review the evidence introduced before the Commission in these proceedings for the purpose of determining controverted questions of fact but are asking the court to review the evidence to determine whether respondents' contention is correct that there is *no* evidence to support the Commission's findings, decisions and orders, and whether there were "such arbitrary and capricious actions on the part of the Commission as to violate the due process clause of the Constitution."

This court has held that

> "While it is true that upon a writ of error to a state court we cannot review its decision upon pure questions of fact, but only upon questions of law bearing upon the Federal right set up by

> the unsuccessful party, it equally is true that *we may examine the entire record*, including the evidence, if properly incorporated therein, to determine whether what purports to be a finding upon questions of fact is so involved with and dependent upon such questions of law as to be in substance and effect a decision of the latter."
>
> *Kansas City Southern Ry. v. Albers Comm. Co.*, 223 U. S. 573;
>
> *Washington ex rel O. R. & N. R. Co. v. Fairchild*, 224 U. S. 510;
>
> *Florida E. C. R. Co. v. U. S.* 234 U. S. 173;
>
> *I. C. C. v. At. & S. F. Ry. Co.*, 234 U. S. 293.

Counsel for petitioners argue, in their supplemental brief, pages 11 et seq., the questions whether "the Commission's findings on questions of public convenience and necessity were final and conclusive under the California law," and cite authorities of the Supreme Court of the State of California in support of the contention that such findings are conclusive. Petitioners, however, state on page 16 of their brief:

> "However, notwithstanding section 67 of the Public Utilities Act and its own prior decisions, the California court in the particular cases under review failed to follow the undoubted principle of law above set forth."

Then after quoting from the decision of the Supreme Court of the State of California rendered in this case, it is said on page 17 of the brief:

> "Thus, the state court has apparently rendered a decision contrary to those previously rendered and contrary to the principle followed by this honorable court. In this respect, we respectfully submit, the Supreme Court of California has erred."

Notwithstanding the previous decisions of the Supreme Court of the State of California, the decision rendered by it in the case at bar, construing the California statute, is controlling. No authorities need be cited in support of this elementary rule and that the construction placed upon the California statute by the highest court of that state is binding upon this court. The case of *N. Y. & Queens Gas Co. v. McCall*, 245 U. S. 345, cited by counsel for petitioners, on page 14 of their brief, supports this elementary rule.

The general rule may therefore be stated that this court will review the evidence, findings, decisions and orders of the California Commission to determine whether any of the rights of the respondents guaranteed by the Constitution of the United States have been impaired.

THE ORDERS OF THE CALIFORNIA COMMISSION VIOLATE THE DUE PROCESS CLAUSE OF THE CONSTITUTION BECAUSE THEY ARE ARBITRARY, NOT SUPPORTED BY ANY EVIDENCE, AND ARE CONTRARY TO THE EVIDENCE.

Any Power that the California Commission Might Lawfully have Exercised in Entering Its Orders Was a Limited Power and Could Not be Exercised Arbitrarily.

The immediate question for determination is whether there was substantial or any evidence, introduced before the Railroad State Commission, which supports its findings, decisions and orders.

> "The legal effect of evidence is a *question of law*. A finding without evidence is beyond the power of the Commission. An order based thereon is contrary to law and must in the language of the statute 'be set aside by a court of competent jurisdiction'."
>
> *L. & N. R. R. Co. v. I. C. C.*, 227 U. S. 88, 92;
> *I. C. C. v. Union Pacific R. Co.*, 222 U. S. 541;
> *Northern Pacific Ry. Co. v. I. C. C.*, 216 U. S. 538, 544.

> "The law remains that when a finding or conclusion of fact is based on uncontradicted evidence, its accuracy usually becomes a mere question of law, and in that event the question may be reviewed if it goes to the jurisdiction."
>
> *Marin Water Co. v. C. R. C.*, 171 Cal. 706, 713.

The Grounds Upon Which The California Commission Seeks To Support Its Orders.

The Commission seeks to support the orders entered by it upon two main grounds; viz.:

So far as the Atchison, Topeka & Santa Fe Railroad Company, and the Los Angeles & Salt Lake Railroad Company are concerned, by the finding, "present passenger facilities of the *Santa Fe* and *Salt Lake stations* are inadequate." (Commission's Order Trans. 80.)

"As to the *Southern Pacific* depot, its continued use does not conform to any satisfactory plan for the elimination of the grade crossings on Alameda Street." (Commission's Order Trans. 140.)

The map incorporated in the brief filed by petitioners for writ of certiorari graphically shows the location of the three steam roads, including their main lines entering Los Angeles and their passenger terminal and other facilities. The lines of the Santa Fe enter from the north and proceed along the westerly bank of the Los Angeles River, reaching the passenger terminal at about the center of the diagram, and extending thence southerly and across the Los Angeles River. The tracks of this road, shown on the diagram, form a portion of its main line over which interstate traffic, both freight and passenger, is transported from and to eastern

destinations and from and to San Diego and other points in Southern California. The line of the Los Angeles & Salt Lake Railroad Company extends in a general northerly and southerly direction along the east bank of the Los Angeles River, and likewise forms a portion of the main line of its road over which interstate traffic is moved from and to eastern destinations and points in Southern California. These lines are remote from the main line of the Southern Pacific Company, operated northerly and southerly along Alameda Street to and through its passenger terminal shown on the diagram, and over which interstate traffic, both freight and passenger, is handled to points located northerly, southerly, easterly and westerly from its passenger station. It therefore appears that the Santa Fe and Salt Lake lines are in nowise concerned with the operation of grade crossings, except those on either bank of the river, and that the Southern Pacific Company is in nowise concerned with the grade crossings other than those on Alameda Street.

The interests of the three steam lines involved in the Commission's order must necessarily be separately considered in order to determine whether their constitutional rights have been impaired.

The Commission's Orders Cannot Be Supported by Finding That the Station Buildings of the Santa Fe and Salt Lake Lines Are Inadequate in View of the Undisputed Fact That Their Passenger Terminal Facilities Are Otherwise Adequate.

PASSENGER FACILITIES OF ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

The *uncontradicted evidence* shows that the passenger terminal facilities of the Santa Fe are adequate not only to provide for its own immediate and *future* needs but are also adequate to accommodate the traffic of all the steam lines, operating into a Union Terminal, which might be erected upon and operated in connection with its existing passenger facilities. The chief engineer of the California Railroad Commission in a report made at the request of the Commission, C. R. C. Exhibit No. 1, at page 290 stated that "the present site of the Santa Fe station and freight yards on the west bank of the river between First and Sixth Streets also appeared to offer a suitable location for a union passenger terminal, and we have made studies to show what is possible in this location. * * * "

At pages 291 and 292 of C. R. C. Exhibit No. 1, the Commission sets forth the advantages of the

existing Santa Fe passenger terminal facilities for a union station:

> "Adequate space is provided for station tracks; economical operation is possible; connection to Pacific Electric lines to the east is possible,—these are lines of heaviest traffic; no grade crossings of railroads are introduced; no changes in streets are necessary; a through terminal is provided; least expense for viaducts and trackage is required; least new capital is required; loss of property values is small; least amount of land is required for railroad purposes; lands now held for railroad use could be released; open door is made for future roads entering Los Angeles; railroads would be confined to natural channel, the banks of the Los Angeles River; this station would automatically do away with all passenger operation on Alameda Street. * * * All of the project is on the ground, as far as the steam roads are concerned. The approaches are on good grades with little or no curvature and with maintenance less than for elevated structures. No streets are crossed at grade by main line tracks."

It is significant that there is no finding made by the Commission in either of its orders that the terminal facilities to the Atchison, Topeka & Santa Fe at Los Angeles are inadequate, the only finding being that the passenger station *building* itself is inadequate and unsatisfactory and as a matter fact no such finding could have been made in view of the *uncontradicted evidence* contained in the engineer-

ing report made by the Commission's engineers. (California Railroad Commission Exhibit No. 1,) to which reference has been made.

Respondents contend that as a *matter of law* under the *undisputed facts* and in the absence of a finding that the terminal facilities are inadequate, it is beyond the power of the Commission to order the Atchison, Topeka & Santa Fe to abandon its existing passenger terminal facilities possessing these great advantages, and join in the expenditure of $36,000,000 where, by the expenditure of approximately one-half million dollars a handsome, adequate, safe, convenient and commodious station building could be erected thereby rounding out and completing a passenger terminal adequate and convenient for the needs not only of its own lines but all other lines serving the City of Los Angeles and any future lines entering that city.

Passenger Facilities of Los Angeles & Salt Lake Railroad Company

The passenger station *building* of the Los Angeles & Salt Lake Railroad Company is confessedly inadequate but the uncontradicted evidence shows that this line owns sufficient property and that its facilities, with the exception of its *station building*, are adequate to handle all of its passenger business safely, expeditiously, and economically.

By an agreement executed between Southern Pacific Railroad Company and Los Angeles & Salt Lake Railroad Company on the 18th day of July, 1917, Southern Pacific-Salt Lake Exhibit No. 1 (Tr. p. 573) provision is made for the joint use of the existing Southern Pacific station building at Los Angeles by the Los Angeles & Salt Lake Line, which would provide the Salt Lake Line with a modern, commodious and convenient station of sufficient capacity to handle its entire passenger traffic for more than twenty years to come.

The Southern Pacific and Salt Lake Lines made application (Tr. p. 31) to the California Commission for permission to jointly use and operate the existing Southern Pacific station, prior to the time the Interstate Commerce Commission had been vested, by the recent amendments to the Interstate Commerce Act, with exclusive jurisdiction to grant such applications. This application, which would have afforded the Salt Lake Line a modern, convenient and safe passenger station, was denied by the Commission.

The Commission's Orders Violate the Due Process Clause of the Constitution in Requiring the Santa Fe and Salt Lake Lines to Join in the Expense of Providing a Union Passenger Terminal in Order that the Grade Crossings on Alameda Street May Be Eliminated.

It has already been shown that both the Santa Fe and the Salt Lake Lines own sufficient property and that their facilities are adequate to handle all of their passenger business at Los Angeles safely, expeditiously, and economically, with the exception of the passenger station buildings themselves; that by the expenditure of comparatively small sums of money modern, convenient, safe and commodious station buildings may be provided by each of these lines.

The Commission's orders are predicated primarily upon the finding that a Union Passenger Station is necessary in order to eliminate grade crossings on *Alameda Street*. (Tr. p. 144.)

The uncontradicted evidence of the Commission's engineering experts shows that, with the exception of the grade crossings along Alameda Street, all other crossings can be eliminated without establishing a Union Station, and that such a station would not facilitate the elimination of any of the river crossings, but that the elimination of these crossings would be made in precisely the same manner whether a Union Station was or was not established.

The Commission's orders compel the Santa Fe and Salt Lake Lines to join in the expense of erecting and maintaining a Union Passenger Station at the cost of millions of dollars solely for the reason that the petitioner believes that this will be an easy and ready way to remove the Southern Pacific Company's trains from *Alameda Street*, over which the Santa Fe and Salt Lake Lines have no right to operate and never have and do not now operate any of their trains.

The Commission's orders are not supported by the finding that the existing passenger station *buildings* of the Santa Fe and Salt Lake lines are inadequate for the reason that the *uncontradicted* evidence shows that the passenger station facilities of these lines, with the exception of the buildings themselves, are fully adequate to meet the public requirements. Under these facts the California Commission only has the power to compel these carriers to erect suitable structures at their present sites.

Therefore, the necessary force and effect of the orders is to require the Santa Fe and Salt Lake Lines to incur an expense of millions of dollars so that their rival, the Southern Pacific Company, may eliminate grade crossings, exclusively used in the operation of its trains; and the Santa Fe and Salt Lake Companies are to that extent deprived of their property without due process of law, denied the

equal protection of the law, and their property is taken for public use without compensation, in contravention of and repugnant to provisions of the Constitution of the State of California and of the Fourteenth Amendment to the Constitution of the United States.

The Existing Passenger Terminal Facilities of the Southern Pacific Company Are Fully Adequate to Serve the Public Convenience and Necessity and to Safeguard the Interests of the Traveling Public and its Employees and the Commission's Orders, Requiring the Southern Pacific Company to Join in the Expense of Erecting a Union Passenger Terminal, Violate the Constitutional Rights of That Company.

It is significant that there is no finding, conclusion or order to the effect that the existing passenger facilities of the Southern Pacific Company, at Los Angeles, are in any wise inadequate or insufficient to promote the security, convenience, or necessity of the public. Such a finding or conclusion could not have been made or reached, for the reason that the *uncontradicted evidence* proves conclusively that the existing passenger terminal facilities of the Southern Pacific Company are modern, commodious, convenient, safe and adequate to accommodate all passenger trains, not only of the Southern Pacific Company but of the Salt Lake and Santa Fe companies as well for a period of at least the next twenty years. The passenger terminal of the South-

ern Pacific Company was, after formal hearing, constructed in 1915 under an express order of the Railroad Commission of the State of California, which was predicated upon the finding that "the structure to be erected under these plans will be efficient and ample to provide for the probable passenger traffic coming to and departing from a city several times the present size of Los Angeles." *In re Application Southern Pacific Company*, 3 C. R. C. 927, 929. (Order set forth in Appendix.)

The Commission's engineer testified in the present proceedings that: "The present station is well designed and is adequate and suitable for its purpose, * * * " that the "site is large enough for some time to come and is sufficient for 140 trains in the future, * * * being based on a twenty year esitmate." The evidence further shows without conflict that the present station facilities of Southern Pacific Company are modern, convenient and are adequate to provide for the convenience of the public for a period of twenty years, making allowances for all possible future "increase of traffic." (C. R. C. Exhibit No. 1, pp. 235, 337.)

Exhibits Nos. 8 (a) to 8 (i), inclusive, introduced by Southern Pacific and Salt Lake companies, are the drawings of the plans and specifications of the present station, showing the complete depot and track lay-out, size of rooms, elevations, etc., and bear out the testimony of the engi-

neers of the California Railroad Commission set forth in California Railroad Commission Exhibit No. 1, page 235, that "*the present station is well designed and is adequate and suitable for its purpose.*"

The Commission's engineers further testified that the existing Southern Pacific station, including the depot itself, and track lay-out, "is large enough for some time to come," and that "it is sufficient for 150 trains in the future * * * being based on a twenty year estimate." This evidence *given by the engineers of the California Railroad Commission* is not only uncontradicted but is fully corroborated by the testimony of the executive and operating officials of the carriers.

The testimony of Mr. T. H. Williams, Assistant General Manager Southern Pacific Company (Tr. 474-6), and Mr. W. H. Comstock, General Manager of the Los Angeles & Salt Lake Line (Tr. 485-9, and S. P. & S. L. Exhibits 29 and 30) is uncontradicted and supports the unqualified statement hereinbefore made that the existing passenger terminal facilities of Southern Pacific Company are fully adequate to meet the requirements not only of the Southern Pacific Company but of all the steam lines operating into Los Angeles at the present time and to provide facilities for any anticipated increase in traffic which may occur within the next twenty years.

"Among the principal advantages of the site of the present Southern Pacific station for a union terminal * * *" set forth by the commission's technical engineering experts at page 284 of California Railroad Commission's Exhibit No. 1, are:

> "It is possible to provide a union L. C. L. freight station at the Santa Fe site, which is the best site available for this purpose."
>
> "It is possible to segregate passengers and freight on different sides of the river."
>
> "It is convenient to business, hotel and shopping districts."
>
> "Use is made of present facilities, cost of which is already paid."
>
> "Elimination of all grade crossings on Seventh, San Pedro and Aliso Streets for through Pacific Electric trains is provided for."
>
> "Pacific Electric traffic south of Los Angeles is given access to the union station."
>
> "Loss of property values is small, if there is any."
>
> "Passengers are not obliged to pass through industrial district but are carried over it."
>
> "The Southern Pacific site has a number of advantages, of which possibly the most important is the fact that it makes use of existing facilities whose cost is already paid for. * * * Our estimate of the present market value of the land is approximately $1,310,348.00 and of all Southern Pacific holdings in this block, $2,101,128.00."

See also testimony of Mr. Shoup (Tr. pp. 490-534).

In the light of this *uncontradicted evidence* the Commission could not lawfully have made a finding to the effect that the passenger terminal facilities of the Southern Pacific Company at the City of Los Angeles are inadequate to serve the public convenience and necessity.

It, therefore, can not be held, under the uncontradicted evidence, that the entire passenger terminal facilities of the Southern Pacific Company are at all improper, inadequate or insufficient to promote the security, convenience, and necessity of the public. It must, therefore, be held that the Commission had no jurisdiction to render its decisions and make the orders complained of, and that the orders must be declared void and set aside.

Louisville & Nashville Railroad Co. v. I. C. C., 227 U. S. 88, 93;

Interstate Commerce Commission v. Northern Pacific Railway Company, 216 U. S. 538, 544.

The Supreme Court of the United States has definitely set this question at rest in the case of *O. R. & N. Co. v. Fairchild*, 224 U. S. 510, where it sustained the contentions of the carriers involved in that proceeding that the Railroad Commission of the State of Oregon had no jurisdiction, power, or authority to order an extension of facilities because the evidence did not show, and the Commission

could not therefore find as a jurisdictional prerequisite, that public convenience and necessity required that the extensions be made.

The Commission's Orders Requiring the Southern Pacific Company to Join in the Expense of Erecting and Operating a Union Terminal Depot Remote From Its Present Passenger Terminal Can Not Be Sustained, Upon the Ground That Its Existing Facilities Do Not Conform to the Commission's Plan For Eliminating Grade Crossings.

It must be borne in mind that all of the carriers have consistently conceded the necessity of eliminating grade crossings in the city of Los Angeles, the Santa Fe and Salt Lake lines, where they cross grades along the westerly and easterly banks of the Los Angeles River, and the Southern Pacific Company, where its main line traverses Alameda Street.

The court's attention is further directed to the fact that the evidence does not show that it is necessary to provide a unified passenger terminal in order to eliminate grade crossings.

The chief engineer of the California Railroad Commission testified that plans for the elimination of the so-called river crossings (in which the Salt Lake and Santa Fe lines are alone interested) may be eliminated irrespective of where a union depot may be located (Tran. 432). The fact, therefore, appears that these river grade crossings may be

eliminated under present conditions irrespective of whether a union passenger terminal is established (Tr. 451).

The *uncontradicted evidence* given by both the Commission's and carriers' engineers shows that all the grade crossings where the Santa Fe or Salt Lake lines are involved may be eliminated without establishing a union station. And, further, that all these grade crossings would receive the same treatment in the elimination thereof whether any union passenger station were established or not.

Complete grade eliminations along Alameda Street may also be accomplished without the necessity of establishing a union passenger station. The *uncontradicted evidence* of the carriers' engineers shows that the final and ultimate plan, outlined by the carriers, by the agreement attached to the application made by the Southern Pacific and Salt Lake lines, for permission to establish a union depot at the present site of the Southern Pacific station, filed prior to the adoption of the amendments of 1920, would reduce the number of grade crossing movements from 89 on the Salt Lake, 306 on the Santa Fe, 1408 on the Southern Pacific, and 22,950 on the Pacific Electric daily at the present time, or a total of 24,753, to absolutely zero (Tran. 329, 340). The 22,950 grade crossing movements made by Pacific Electric trains daily at the present time,

would not be eliminated, if the Commission's orders were carried into effect but would be entirely eliminated under the carriers' plans.

The Commission has made no finding and has reached no conclusion that a union passenger terminal is necessary in Los Angeles for any other purpose than to enable an order to be entered eliminating grade crossings; in fact, the Commission states, in its original order:

> "The principal arguments against the establishment of a union station are:
>
> "(1) Los Angeles is not a through station. Practically all trains entering the city terminate there, and it is there that the majority of the passengers reach their destination. Only approximately 15 per cent. of the total number of passengers transfer from one station to another.
>
> "(2) The first cost of any adequate union passenger terminal will be high and the saving in operating expenses will not alone warrant the resulting increase in fixed charges."

It may be remarked that the approximation of 15% of through passengers made by the Commission is the highest approximation made; the carriers' evidence showing that a careful check disclosed only twelve out of every ten thousand passengers would avail themselves of facilities afforded by a union station (Trans. 351).

It must be held that any finding made by the Commission that public convenience and necessity requires the erection of a union station at the city of Los Angeles is wholly unsupported by the evidence, and that the attempt of the Commission to justify its orders upon the grounds merely that the passenger station buildings of the Santa Fe and Salt Lake lines are inadequate to serve the public convenience and necessity, and that the existing depot of the Southern Pacific Company * * * does not conform to the plan for the elimination of said dangerous grade crossing * * * cannot avail.

The Supreme Court of the State of California, as has hereinbefore been suggested, said "there is no merit in this contention * * * that the establishment of a union terminal depot was an indispensable element in accomplishing the elimination of such grade crossings * * * and that * * * we can conceive of no indispensable relation between the elimination of grade crossings and the establishment of a union depot facilities" (Tr. 233).

This rule announced by the Supreme Court of the State of California, in construing the state statute, under the facts of this case, is, under the elementary rules and authorities, to which we have adverted, controlling upon this court.

Counsel for petitioners in their supplemental brief, page 18, cite the case of *Erie Railroad v.*

Board of Public Utility Commissioners, 254 U. S. 394, in support of the contention there made that the power of the state is supreme to protect the public in its use of streets, where such power conflicts with the operation of interstate carriers.

This case is not pertinent for the reason that the carriers are not resisting the elimination of grade crossings, and because, as above suggested, the Supreme Court of the State of California has expressly held in this case, construing the state statutes, that there is no indispensable relation between the elimination of grade crossings and the establishment of a union depot.

The Commission's orders are, therefore, shown to be repugnant to the provisions of the Fourteenth Amendment of the Constitution of the United States and must be held to be void.

THE DECISIONS AND ORDERS COMPLAINED OF TAKE THE PROPERTY OF RESPONDENTS FOR PUBLIC USE WITHOUT COMPENSATION AND DEPRIVE THEM OF THE PROPERTY WITHOUT DUE PROCESS OF LAW AND DENY RESPONDENTS THE EQUAL PROTECTION OF THE LAW IN CONTRAVENTION OF THE PROVISIONS OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

We have already referred to the evidence introduced before the Commission by both the engineers of the California Railroad Commission and the executive, operating and engineering officials of the carriers relating to the adequacy of the passenger terminal facilities of the three steam lines involved in the order.

The Commission's decisions and orders require the carriers to abandon large areas of terminal land acquired for the express purpose of handling the traffic in the City of Los Angeles, to "destroy and scrap facilities" of a value of several millions of dollars, to permit the joint use of facilities by rival carriers, *but no provision is made in the decisions and orders for reimbursement to any of the petitioners for the inevitable losses which they will sustain by scrapping their facilities, devoting their lands and facilities to the partial use of their rivals or for the loss of property values which they will inevitably sustain.*

The question for immediate determination is whether the Commission may in the face of the *uncontradicted evidence* to which we have referred "subject the property devoted by its owners to a public use, to another public use, or to the same public use by its rivals * * *" without first making compensation for the loss of properties abandoned and scrapped, and for the use of such properties as may be jointly used by rival carriers.

Irrespective of the limitations placed upon the power granted to the Commission by the Public Utilities Act, especially section 41 thereof, which expressly provides that where after a hearing the Commission finds that public convenience and necessity requires the use by one public utility of the tracks or other equipment or any part thereof belonging to another public utility, the Commission shall provide "prior to such use a fair and just compensation for damages suffered," the Fourteenth Amendment to the Constitution of the United States guarantees to each of these petitioners the right to have compensation made to them before property or facilities owned by them are required to be scrapped, abandoned or devoted to the use of present and prospective rivals.

> *Pacific Telephone & Telegraph Co. v. Eshelman,* 166 Cal. 640, 662-3.

Likewise, the constitutional rights of a utility are impaired when under the facts of a case such as this, it is shown that the existing facilities of a utility are adequate to fully meet its statutory and common law obligations to the public and its employees, an order is entered requiring the utility to expend millions of dollars to provide a "monumental gateway" to satisfy the "civic pride * * * in a tourist center * * *."

O. R. & N. Co. v. Fairchild, 224 U. S. 510.

In considering "the desirability of a union passenger terminal" it is said at page 247 of the California Railroad Commission Exhibit No. 1, that:

> "A railroad passenger terminal is essentially a city matter; it is the main entrance to, and the main exit from, every important city. City pride and what might be called the advertising aspect of a fitting city entrance are, therefore, essential factors in the consideration of any important passenger terminal."

The Commission's experts supported the respondents' contention by reciting in their report immediately following the foregoing quoted paragraph that,

> "In not a single instance of monumental passenger terminal construction in recent years can it be said that the cost of the station, considered from the railroad operating viewpoint alone, is justifiable as a sustaining investment."

Mr. Sachse further testified that:

> "I did not say in my report, and I am not by any means of the opinion, never was and never will be that this thing (Union Passenger Terminal) is desirable if the city bears the cost * * *" (Trans. 436).

"I am still of the opinion" (expressed in C. R. C. Exhibit No. 1, at page 247), that: "In not a single instance of monumental passenger terminal construction in recent years can it be said that the cost of the station, considered from the railroad operating viewpoint alone, is justified as a sustaining investment" (Tr. 433).

During the course of the hearing the Commission plainly indicated that the carriers would be required to bear the entire cost of erecting this "monumental gateway" which, according to the revised estimate of the Engineering Conference, set forth in the table (Tr. 94) ranges from $25,396,633 to $45,092,104.

At page 454 of C. R. C. Exhibit No. 1, it is said:

> "*The establishment of a union passenger terminal as recommended by us will be serious in its effect on the Southern Pacific.* The site of the depot yard cutting across Alameda Street, as it does, isolates the present less-than-carload freight station, and the establishment of a coach yard at the site of the present

> Southern Pacific main freight yard will force the construction of a new yard. * * * The construction of a connecting track between the depot yard of the union passenger station and the proposed site of the coach yard will make it impossible to handle the cars in and out of the freight station and will necessitate moving the freight station elsewhere."

The Commission's expert testified that it was absolutely essential that this existing facility of the Southern Pacific Company be abandoned by that line in order that it might be used as a coach yard by all carriers entering and using the proposed Plaza union depot. Yet no *provision is made in the Commissions decisions and orders providing for compensation to be paid the Southern Pacific Company for the loss of this facility or for the joint use of this facility by its rivals.*

This statement is true with reference to the many facilities now owned and operated by respondents at their passenger terminals at Los Angeles. The Commission's decisions and orders provide for the abandonment of large areas of their terminals, the scrapping of facilities erected at a cost of millions of dollars and the joint use of portions of their remaining facilities by rival carriers without any provision being made to compensate respondents for the direct losses which they will sustain, or for the amounts they are entitled to receive by virtue of their constitutional and statutory rights for per-

mitting rival lines to use their facilities. The Commission's decisions and orders, therefore, requiring the abandonment of these properties without making provision for compensation to respondents, and in requiring respondents to join in the expense of erecting another passenger station and additional terminal facilities in the City of Los Angeles, are unreasonable, arbitrary and unlawful because they transgress the constitutional provisions against taking private property for public use without compensation. The power sought to be exercised goes not merely to the regulation of respondents and their business but passes beyond proper regulation and amounts to a taking of the property of respondents and the orders are therefore referable not to the police power, but to the power of eminent domain.

Irrespective of public convenience or public necessity, there is no justification for the taking of respondents' property for the purposes proposed and depriving respondents of the use thereof without having first made provision for, and making payment to respondents of, adequate compensation.

Pac. Telephone & Telegraph Co. v. Eshelman, 166 Cal. 640, 662-3;

O. R. & N. Co. v. Fairchild, 224 U. S. 510.

In deciding the case of *Pacific Telephone & Telegraph Co. v. Eshelman*, supra (page 663), the California court held that there were certain fundamental principles which govern and that

> "The first of these is that this (police) power goes merely to the *regulation* of the public utility, and that when an order passes beyond proper regulation it amounts to a taking of the property and the order is then referable not to the police power but to the power of eminent domain * * *. Nor is it of consequence that the law or order be in terms and in form regulatory, if, in effect, it is a taking of property or a deprivation of the use of property within the meaning of the Constitution. No public convenience, no public necessity, however urgent, will justify such a taking."

The Court further held (page 664):

> "Another principle, quite as important and quite as fundamental, is that 'taking' of property within the meaning of the Constitution is not restricted to a mere change of physical possession, but includes a permanent or temporary deprivation of the owner of its use."

The court further announced the principle that the inferiority of service (although no such inference or assumption or conclusion can be reached under the facts of this case) actually rendered is not, of course, a justification for the taking of property and that "no necessity, however urgent, justifies a taking of property without compensation." (*Pac. Tel. & Tel. Co. v. Eshelman*, 166 Cal. 668-669.)

In the light of this decision and especially in view of the fact that the evidence before the Commission did not show or prove that the existing facilities of respondents are inadequate to fully serve the convenience of the public and to fully provide for the safety of the public and the employees of petitioners, it must be held that the Commission has not regularly pursued its authority and has exceeded its powers, that its orders are not properly referable to the police powers but to the powers of eminent domain and that in attempting to provide a "monumental gateway" possessing unusual "aesthetic possibilities" to satisfy the "civic pride" of this great "tourist city" the Commission has entered decisions and orders which are repugnant to and in contravention of the Fourteenth Amendment to the Constitution of the United States, and which deny respondents the equal protection of the law and deprive each of them of their property without due process of law and that the decisions and orders should be vacated, annulled and set aside.

The cases, by the courts of other states, cited by petitioners' counsel in opposition to this contention are easily distinguishable under the facts of those particular cases, and because of the different provisions found in the statutes of those states.

In the case of *Railroad Commission v. North Alabama Ry.*, cited at page 21 of petitioners' brief, as is shown by the excerpt, "the railroad may lose the

use of the old building or the use of the lot as a location for its passenger depot." Here the Southern Pacific Company will lose a depot, built under the order of the California Railroad Commission, and which the uncontradicted evidence shows, there being no finding to the contrary, is modern, convenient and adequate to serve the needs of the public.

The statute upon which the Commission rested its decision in the case of *Railroad Commission v. Ala. Gt. So. Ry. Co.*, reviewed by counsel in their brief, expressly required the railroad company to join in the use of union passenger stations. There is no such provision in the California law; in fact, "union depots are not mentioned therein."

The same observation may be made with reference to the cases of *State of Texas v. St. L. & So. W. Ry.* and *Dewey v. M. Coast Line Ry.*, cited upon page 22 of their brief.

The facts of the cases of *Gulf & S. F. Ry. Co. v. State*, and *Mayor, etc., of Worcester v. Norwich, etc., Ry.*, are essentially different from the facts in the case at bar.

Many state cases might be cited in opposition to those upon which counsel for petitioner relies, but we may rest content by referring the court to the case of *State ex rel. Wabash Ry. Co. v. Public Service Commission*, 271 Mo. Rep. 155, in which

it was held that where the evidence before the Commission does not tend to prove any defect or inadequacy in the present passenger depot, which cannot be corrected by repairs, improvement or enlargement, an order of the Commission, requiring the railroad company to erect a new depot in a new place, is unreasonable.

The Commission's Decisions and Orders Are in Contravention of and Repugnant to the Provisions of Section 10 of Article 1 of the Constitution of the United States by Reason of the Fact that These Decisions and Orders Will, if Made Effective, Impair the Contract Made Between the State of California and Southern Pacific Railroad Company, and the Contract Made and Entered Into Between the City of Los Angeles and Southern Pacific Railroad Company, Granting a Franchise Authorizing the Construction and Operation of Its Railroad on and Along Alameda Street in the City of Los Angeles.

The State of California has heretofore, as is shown by the record made before the Commission, entered into a contract with the Southern Pacific Railroad Company, the lessor of Southern Pacific Company, whereby it was granted the right to construct and operate its line of railroad from San Francisco to and through the City of Los Angeles, this line having heretofore been constructed and now being operated in the City of Los Angeles along Alameda Street and other streets.

This contract is evidenced by the grant made by the State of California to the Southern Pacific Company, the grant having heretofore been accepted by the Southern Pacific Railroad Company by filing its articles of incorporation and constructing its railroad commencing in the city and county of San Francisco, State of California, and running through the City of Los Angeles to San Pedro, and from, in and through the City of Los Angeles to the Colorado River, and other places in the State of California.

Likewise, the City of Los Angeles has, under the laws of the State of California and the charter of the City of Los Angeles, heretofore granted to Southern Pacific Railroad Company, the predecessor in interest of Southern Pacific Railroad Company, the lessor of Southern Pacific Company, by ordinance a franchise to construct, maintain and operate its railroad along Alameda Street in the City of Los Angeles, and the grant has been heretofore accepted by the Southern Pacific Railroad Company by constructing and operating, directly or through its lessee Southern Pacific Company, its railroad commencing in the City and County of San Francisco and running thence to and through the City of Los Angeles to the City of San Pedro, and from, in and through the City of Los Angeles to the Colorado River and other places in the State of California.

Paragraph 14 of the final order entered by the Commission (Tr. 150, 151) provides:

> "That upon the completion of the union passenger terminal, as required by this order, the defendant, Southern Pacific Company, shall discontinue the operation of trains on Alameda Street, between College Street and Fifteenth Street, inclusive, in the City of Los Angeles, except for the purpose of local freight switching, which may be carried on during limited hours to be hereafter fixed by supplemental order."

The order denies Southern Pacific Company and Southern Pacific Railroad Company the right to continue the operation of their trains along Alameda Street in the City of Los Angeles, except for the purpose of industrial switching, and if this order becomes effective the contract between the State of California and these petitioners and the contract between the City of Los Angeles and these petitioners, granting petitioners the franchises and right of operating its main line trains over this street, will be impaired and abrogated and these respondents will be deprived of these rights in violation of Section 10 of Article I of the Constitution of the United States and their property will be taken for public use without compensation, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

California State Telegraph Co. v. Alta Telegraph Co., 22 Cal. 398, 422-3;

New Orleans Water Works Co. v. Rivers, 115 U. S. 674;

Tammany Water Works v. N. O. Water Works, 120 U. S. 64, 67;

City of St. Louis v. W. U. Tel. Co., 63 Fed. 68, 70;

New York Electric Lines v. Empire City Subway, 235 U. S. 179, 192-3;

Russel v. Sebastian, 233 U. S. 195, 204;

Baltimore, etc. Co. v. Baltimore, 64 Fed. 153, 159-60;

Pacific Telephone & Telegraph Co. v. Eshelman, 166 Cal. 640.

The case of the *Denver & Rio Grande v. Denver*, 250 U. S. 242, cited by petitioner's counsel in opposition to this contention is not, as contended by counsel, "squarely in point."

In that case a carrier had merely been directed to abandon a small portion of a spur track; whereas in this case the Southern Pacific Company is required to abandon three miles of its main line used largely for the handling of interstate traffic.

CONCLUSION.

It is submitted that this court should only review the question actually decided by the State Court but that in the event the court concludes that it should review other questions than those decided by the State Court it should hold that the orders entered by the Railroad Commission of the State of California violate respondents' constitutional rights for the reasons, among others:

That there was no evidence before the Commission to sustain the finding that the passenger station facilities of respondents are inadequate or that the security or convenience of the public or respondent's employees necessitate such consolidation, abandonment or extension of facilities, or construction of such a union passenger terminal, but that, on the contrary, the *uncontradicted evidence* proves that the existing passenger terminal facilities of respondents at Los Angeles and the consolidation of facilities of the Southern Pacific Company and Salt Lake Line proposed by these respondents provide modern, commodious, adequate and safe facilities to accommodate all passenger traffic which may be carried by the respondents for at least the next twenty years.

That the decisions and orders complained of deprive respondents of their property without due process of law and take their property for public

use without compensation, in contravention of and repugnant to the provisions of the Fourteenth Amendment to the Constitution of the United States for the reason that no provision is made to pay to the respondents compensation for the loss of the facilities which must be necessarily abandoned, or for the use by their rivals of such facilities as may be required under the plan which the Commission orders the carriers to put into effect.

That the requirements of the orders compelling the Atchison, Topeka & Santa Fe and Los Angeles & Salt Lake lines to join in the expense of erecting and maintaining a union passenger terminal in order to effect the elimination of the grade crossings on Alameda Street over which these respondents have no right to operate and never have operated any of their trains deprive these respondents of their property without due process of law and deny them the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

That the requirements of the orders, compelling the Southern Pacific Company and Southern Pacific Railroad Company to join in the expense of erecting and maintaining a union passenger terminal for the reason that the existing depot of these respondents does not conform to the plan for the elimination of grade crossings in the City of Los

Angeles, will deprive these respondents of their property without due process of law and deprive them of the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

That likewise Southern Pacific Company and Southern Pacific Railroad Company will necessarily be deprived of valuable franchise rights and privileges by being compelled to discontinue the operation of trains along Alameda Street in the City of Los Angeles, and that the decisions and orders of the Commission are in these particulars in contravention of and repugnant to the provisions of Section 10 of Article I of the Constitution of the United States, and by reason of failure of the Commission to make provision for payment to Southern Pacific Company and Southern Pacific Railroad Company of compensation for the loss of these valuable franchise rights the Commission's decisions and orders are in contravention of and repugnant to the provisions of the Fourteenth Amendment of the Constitution of the United States.

It is further submitted that in reviewing the question decided by the Supreme Court of the State of California this court should hold:

That the laws of the State of California under which the Railroad Commission of that state proceeded are in contravention of and repugnant to the provisions of Section 8 of Article I of the Constitution of the United States for the reason that the sole and exclusive power to enter orders such as were entered by the California Commission has been vested in the Interstate Commerce Commission by the amendments made to the Interstate Commerce Act in 1920, and that these amendments have divested the California Commission of jurisdiction to render or enforce the decisions and orders of which complaint is made.

That the orders of the California Commission directly interfere with and burden interstate commerce in violation of the commerce clause of the Federal Constitution.

Finally, that the history of Congressional legislation enacted pursuant to the commerce clause of the Federal Constitution regulating the rights and practices of interstate carriers shows that the Congress, because of the growth and development of the national commerce, has found it necessary in "unequivocal language" to declare a national railroad policy and has enacted amendments to the Interstate Commerce Act, covering every detail of the subject so completely and in such a manner as to manifest its intention to exercise its constitu-

tional authority "in order to maintain an adequate railroad service for the people of the United States."

The wisdom of this Congressional policy is forcefully exemplified in the instant case.

The mandate of the amended Federal statute requiring the Commission to establish and adjust rates of interstate carriers as a whole, or in groups or territories, so that such carriers *shall* earn a "net railway operating income, equal as nearly as may be, to a fair return upon the aggregate value of the railway property * * *," and Section 5 of the amended act requiring the Commission as soon as practicable to "prepare and adopt a plan for the consolidation of the railway properties of the continental United States into a limited number of systems" (which the Interstate Commerce Commission has under consideration at the present time), and the other provisions of the amended statute providing for the comprehensive regulation of interstate carriers, would be nullified and the Interstate Commerce Commission would be rendered impotent to discharge these duties in the event the forty-eight state commissions retained jurisdiction or were held to possess concurrent jurisdiction with the Interstate Commerce Commission to require interstate carriers to abandon facili-

ties, extend their lines, and consolidate their terminal facilities at the principal cities in the several states.

Unless it be held in conformity with the decisions of this court that the jurisdiction of the State Commission to order carriers "subject to the jurisdiction of the Interstate Commerce Commission" to extend and abandon their lines and consolidate their terminal facilities and operate such facilities jointly, has been subordinated to the jurisdiction of the Federal Commission the inevitable result would be not only financial ruin to the carriers but carriers would be unable financially to provide adequate facilities for properly handling the nation's traffic. It is apparent that the amendments to the Interstate Commerce Act were adopted because Congress in accordance with its consistent policy recognized the necessity for the essential unity of the physical, economical and financial questions relating to the business of the interstate carriers, and the necessity of protecting railroad credit not only by providing reasonable rates of return but also by the actual control of capital expenditures and the desirability of securing the advantages of the unified operation of railroads and the minimum loss by competition, with due regard to the cost of service and the financial ability of the carriers concerned, and has enlarged the powers

of the Commission by vesting the Commission with authority to order the joint use of terminals, the making of extensions, and the abandonment of the lines and facilities of interstate carriers so that the Commission may promptly discharge the Congressional mandate of consolidating existing railroads and of protecting interstate commerce from being unduly burdened by the action of state authorities.

Concurrent exercise of such power and jurisdiction by the Federal and state commissions would result in conflicting orders and would seriously, if not entirely, operate to nullify the Federal policy which the Interstate Commerce Commission is empowered and directed to carry into effect.

> "It is unnecessary to repeat what has frequently been said by this court with respect to the complete and paramount character of the power confided to Congress to regulate commerce among the several states. It is of the essence of this power that, where it exists, it dominates. Interstate trade was not left to be destroyed or impeded by the rivalries of local governments."
>
> *Houston E. & W. Texas R. Co. v. U. S.*, supra.

By undertaking to usurp the jurisdiction now vested exclusively in the Interstate Commerce Commission and by entering orders which directly bur-

den interstate commerce the Railroad Commissi
of California has entered orders repugnant to a
in contravention of the provisions of Section 8
Article I of the Constitution of the United Stat

And it is respectfully submitted that the jud
ment of the Supreme Court of the State of Ca
fornia should be affirmed and the writs dismisse

Respectfully submitted,

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Railroad Company.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1923.

No. 283.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, *Petitioner*,

vs.

LOS ANGELES AND SALT LAKE RAILROAD COMPANY (A CORPORATION), *Respondent*.

CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

REPLY BRIEF FOR PETITIONER.

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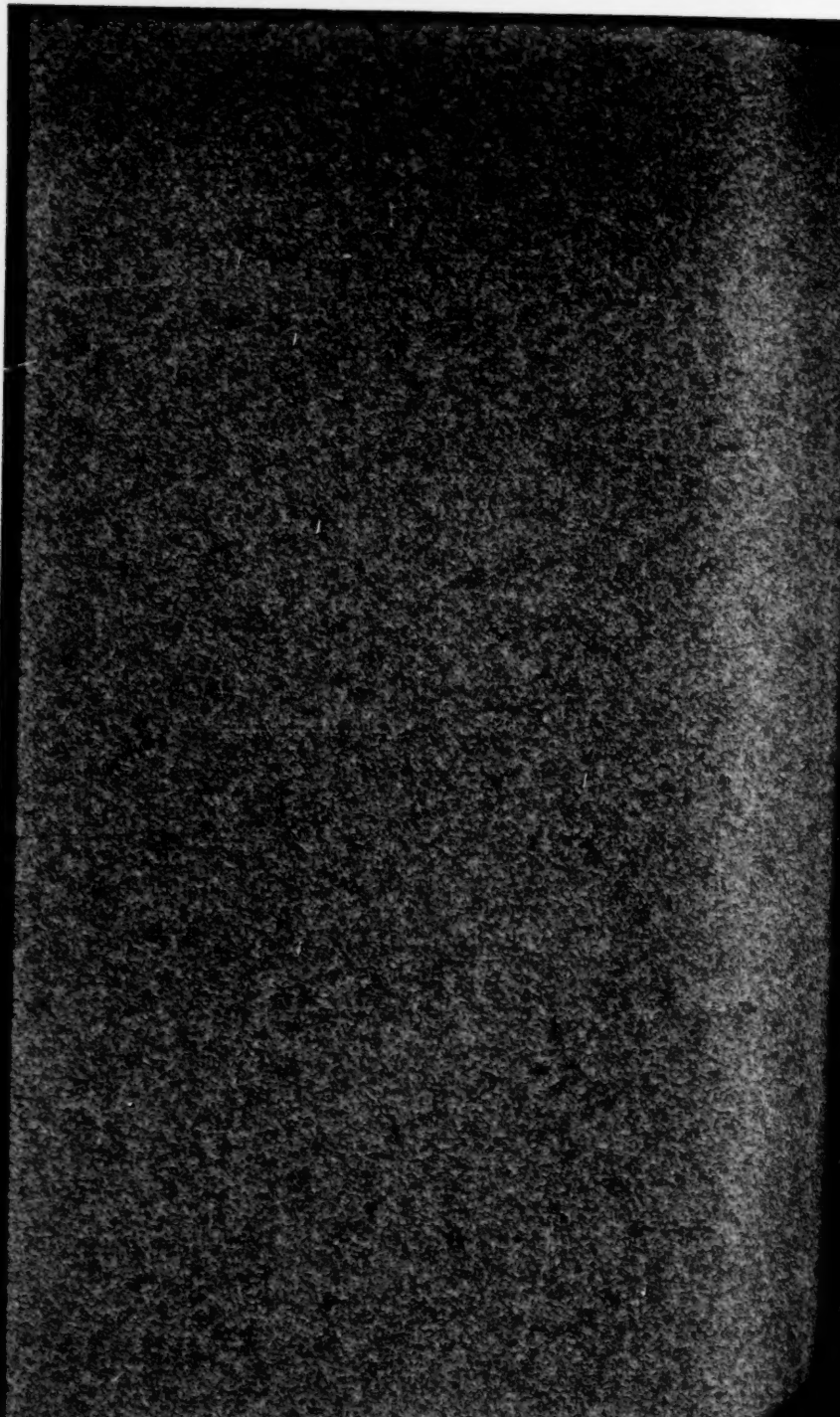

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1923.

No. 285.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,
Petitioner,

vs.

LOS ANGELES AND SALT LAKE RAILROAD COMPANY (A CORPORATION), *Respondent.*

CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

REPLY BRIEF FOR PETITIONER.

SCOPE OF REVIEW.

The Supreme Court of California in annulling the order of the California Railroad Commission in the matter here under review based its decision exclu-

sively on one proposition. That was the proposition that the authority to require respondents to build a new union depot had been vested in the Interstate Commerce Commission by the Transportation Act of 1920 and by virtue of said Act the California Commission had been divested of jurisdiction over the subject (Tr., p. 233). Of the many other questions submitted to it, including questions of fact, reasonableness of the order, sufficiency of evidence, due process of law, et cetera, the California Court made no mention although the entire record was before it.

In filing the Petition for the writ of certiorari in this Court petitioners submitted but one issue. That was the one issue decided by the Supreme Court of California above set forth. Accompanying this Petition a greatly diminished transcript of record was filed containing only the pleadings, orders, and decisions in the case and omitting all testimony and exhibits. Upon the granting of the writ by this Court, it was the intention of petitioner to confine itself to this one issue and to have filed as the return to the writ the same transcript which was filed with the Petition. Respondents, however, declined to stipulate to the filing of this transcript alone and requested that enough evidence be included in the record to enable this Court to pass on all matters presented to the State Court although not passed upon by that Court. Accordingly, at the express request of respondents the supplemental transcript containing a considerable part of the testimony was prepared and certain exhibits filed. Respondents now argue in their brief that this transcript ought not be considered and that the review should be confined to the one issue presented by petitioner (Res. Br., pp. 12-18).

Petitioner has never believed that upon a writ of certiorari to a state court, this Court would pass upon questions not determined by the State Court and have never argued that this should be done. Since respondents have now arrived at the same conclusion there is no dispute between the parties as to the scope of this review.

However, the supplemental record has been filed and sufficient evidence is before the court, so that if the court should determine that both parties are wrong in their conception of the law on this point, a decision on all points can be rendered.

THE TRUE ISSUE.

The true issue in the case is the issue created by the holding of the California Court that the authority to require respondents to build a Union depot has been vested in the Interstate Commission by the Transportation Act of 1920 and the California Commission thus deprived of this power. To determine this issue it is necessary to determine precisely what the order of the California Commission requires and also to just what extent Congress has vested new authority in the Interstate Commission.

THE ORDER OF THE CALIFORNIA COMMISSION.

It is agreed by all parties that the order requires the Railroads to

Procure new grounds for a Union Depot;

File Plans and Specifications for a Depot;

Construct a depot in accordance with these plans, and

Eliminate grade crossings.

It is insisted by respondents that in addition to the above the order requires the Railroads to make extensions and abandonments of their lines and make joint use of each other facilities. With this contention petitioner does not agree.

As pointed out in our former briefs the exact requirements of the order are shown by the map. The Southern Pacific Lines from the north and east pass directly through the area designated by the Commission for the Depot. The Santa Fe line borders the area along the whole of its Eastern side and the Salt Lake line does likewise, but is separated only by the Los Angeles River, less than 200 yards wide. The Southern Pacific Lines from the South must reach the proposed depot site by shifting the Alameda Street line down to the area along the river bed or by arranging for a joint use of tracks with one of the other carriers, a plan which the Southern Pacific has itself proposed and strenuously argued for, but which the State Commission has not ordered and which it is not claimed this Commission has jurisdiction to order.

The alleged abandonment of lines refers solely to the cessation of main line traffic upon Alameda Street. This, of course, is the very essence of the plan to eliminate the grade crossings. The Southern Pacific has itself proposed to eliminate the Alameda Street crossings by a similar cessation of traffic on that Street.

The final order of the Commission (which is the only order the State Court considered, the first order having been entirely superseded) required only such additions to, extensions of, improvements and changes in the existing railroad facilities *"as may be reasonably necessary and incidental to the use of the Union Passenger Station"* (Tr., p. 146).

No joint use of trackage was ordered and it is clear from the map that each railroad can reach the proposed depot on its own tracks, if it so desires.

That such an incidental re-arrangement of trackage and construction of approaches to the depot, constitute "extensions" and "abandonments" within the meaning of the Transportaion Act, was, of course, never admitted or conceded by petitioners' counsel, but has been at all times strenuously denied.

Upon the assumption (which we claim is erroneous) that the Commission has ordered extensions and abandonments and joint use of facilities, as those terms are used in the Act of Congress, respondents have devoted a large part of their brief to proving by a wealth of authority that Congress having legislated in this field the State Powers have been superseded. Upon these general propositions there is no dispute. The true issue as above stated is whether or not Congress, in adopting the act of 1920 has in fact legislated upon the matters covered by the final order of the California Commission here under review. To this question, we say the answer must be no.

To sustain our position on this issue, we have only to refer to the particular terms of the Act of 1920. In that Act there are certain sections which deal with extensions and abandonments of lines, joint use of facilities and with terminals. But in legislating upon these particular matters just how far has Congress gone in enlarging the powers of the Interstate Commission? We are not concerned with how far Congress could have gone or what would have been the result if Congress had attempted to occupy the entire field of regulation.

THE ENLARGED SCOPE OF THE INTERSTATE COMMERCE ACT.

Counsel for respondents place much stress upon the greatly enlarged powers of the Interstate Commission under the 1920 Act. They point out that a new National Policy has been declared and quote the statement of this Court in the Wisconsin case, that "The Act made a new departure." With these general propositions we are in entire accord. But we do not think they are determinative of the issue here. Respondents' argument seems to be that because the act has made a new departure, therefore the power of the States on these particular matters has been superseded. But Congress has not vested such broad sweeping powers in the Interstate Commission as to "involve general regulation of intrastate commerce" (*Railroad Commission* v. *C. B. & Q.*, 257 U. S., 563, 590). In vesting new powers in the Interstate Commission, at least as to all matters of the kind here at issue, Congress has been specific and definite. It is the position of petitioners that as to these sections of the Act which deal with extensions, abandonments, and terminals, the extent to which Congress has increased the power of the Interstate Commission as to these matters must be determined by analysis of the particular sections. Undoubtedly a consideration of the Act in its entirety and of the enlarged scope of the powers of the Interstate Commission is a valuable aid in construing those powers expressly created. R. R. C. Wis. v. C., B. & Q. R. R. (*Supra*). Akron C. & Y. R. R. Co. v. U. S., 43 Sup. Ct. Rep., 270 But it is not proper by such a consideration of the enlarged scope of the Act to import into the statute powers not expressly conferred or necessarily implied by any of its

specific provisions. This we submit is the fallacy of respondents' argument.

EXTENSIONS AND ABANDONMENTS.

Paragraph 18 of Section 1 of the Act of Congress provides in part

> "No carrier by railroad subject to this Act shall undertake the extension of its line of railroad or the construction of a new line of railroad or shall acquire or operate any line of railroad or extension thereof * * * unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity will require the construction or operation * * * of such additional or extended line of railroad, and no carrier by railroad shall abandon all or any portion of a line of railroad, or the operation thereof unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment."

The extensions referred to in this section are extensions constructed to render new service, i. e., service to a community or to persons who have either not been served at all or who are in need of additional service, and the abandonments refered to are abandonments of lines of railroad by which communities or persons are deprived of railroad service. Where a mere relocation of tracks is made, such as taking up one piece of a track and laying another in its stead a short distance away with no cessation or change of service, there is no extension or abandonment of a line of railroad within the meaning of the Act. The

Interstate Commerce Commission has so construed this section of the Act.

In application of *Philadelphia, Newton & N. Y. R. R.*, 67 I. C. C., 252, the Railroad Company asked for a certificate of public convenience and necessity to abandon a portion of its railroad in the city of Philadelphia and to construct a new line to take the place of the abandoned portion. The Commission said:

> The purpose of the proposed change is to permit the construction of a building at the corner of Second Street and Erie Avenue, and to enable the city of Philadelphia to vacate American Street between Erie Avenue and Pike Street, as well as Butler Street between Second Street and American Street. * * * So far as [illegible] the public is concerned, the proposed change will have no effect whatever, the public being interested only to the extent that travel on the [illegible] streets will be facilitated by the readjustment.
>
> From the facts above stated, it is evident that the removal of the present tracks between Pike Street and Erie Avenue can not be said to constitute an abandonment of a line of railroad within the meaning of paragraph (18) of Section 1 of the Interstate Comerce Act, since the applicant's whole line will still be in service as before and will render exactly the same service in a new location. Nor do we think that the relocation of the line constitutes the construction of a new line of railroad or an extension of a line of railroad within the meaning of that paragraph. The project is purely a relocation of an existing line under circumstances involving no change in the service rendered by the applicant to the public.

To the same effect see application of Pearl River Valley R. R. Co., 67 I. C. C., 748.

It has been held by this court that if the meaning of a statute is doubtful, the decision of an administrative board charged with its execution is entitled to great weight.

Pennoyer v. *McConnaughy*, 140 U. S., 1, 24, 25.
New York, N. H. & H. R. Co. v. *Interstate Commerce Commission*, 200 U. S., 361.
T. & T. Ry. Co. v *Abilene*, 204 U. S., 426, 433.

On pages 56 and 57 of their brief respondents have cited seven decisions of the Interstate Commerce Commission as holding that that Commission has placed a practical construction upon paragraph 18 of Section 1 and "has asserted and exercised jurisdiction over these matters," referring to changes of trackage such as were ordered here.

We must respectfully protest that respondents' citations do not suport their text.

Examination of these cases shows that every one of them is in full harmony with the Interstate Commerce Commission's decision in the *Philadelphia, Newton & New York case* above quoted and fully supports the construction of paragraph 18, Section 1, for which we are contending.

For example, in the *Virginia Western Extension Case*, 72 I. C. C., 55 (cited in respondents' brief, page 57), the extension for which a certificate was sought was 3.6 miles in length and was to serve a territory *not served by any railroad*. The primary purpose of the extension was to develop 5000 acres of coal land.

In the *Chicago & Alton Railroad Extension Case*, 72 I. C. C., 1 (cited in respondents' brief, page 57), the proposed extension was 5.67 miles of new line. It was to serve new territory in which was a town of 694 peo-

ple *not served by any railroad*. It was also to furnish transportation for large apple and timber industries.

In the *Silverton Railway Abandonment Case*, 72 I. C. C., 13 (cited in respondents' brief, page 57), 15 miles of line was sought to be abandoned. This line was built to serve a mining territory and the mines had become practically exhausted. Abandoning the line left the territory without railroad service at all.

We are in full agreement that cases such as those cited by respondent come within the provisions of paragraph 18, section 1, and call for a certificate of public convenience and necessity.

But in the case at bar we have a rearrangement or relocation of tracks such as falls squarely within the decision of the Interstate Commerce Commission in the *Philadelphia, Newton & New York case, supra*, where it was said "the applicant's line will still be in service as before, and will render exactly the same service in a new location."

From the above construction it follows that in adopting paragraph 18, section 1, Congress has not occupied the field covered by the State Commission's order so far as any alleged extensions or abandonments or changes in trackage are concerned, and the order of the Commission as to these matters is within its power.

TERMINALS.

Paragraph 4, section 3, deals with terminals. In adopting this paragraph has Congress gone to the extent of depriving the States of all power to require carriers to construct new depots? Only a careful examination of this particular paragraph can answer this question. Such analysis was made on pages 24 to 26 of petitioner's first brief and it need not be re-

peated here. It is apparent from the section that Congress was dealing only with the use by one carrier of the existing terminal facilities of another. There is nothing in the section which refers to the acquisition of new property or the construction jointly of a new Union Depot on a new site. That Congress ought to have included the construction of new depots and the acquisition of new property, or that confusion may result because Congress did not see fit to do so is a matter for that body to consider and is beside the point here. And to attempt by implication to extend the language of paragraph 4 beyond its plain terms is clearly unwaranted. As said by this court in the Minnesota Rate cases:

> "The interblending of operations in the conduct of interstate and local business by interstate carriers is strongly pressed upon our attention. * * * The force of these contentions is emphasized in these cases, and in others of like nature, by the extreme difficulty and intricacy of the calculations which must be made in the effort to establish a segregation of intrastate business for the purpose of determining the return to which the carrier is properly entitled therefrom.
>
> "But these considerations are for the practical judgment of Congress in determining the extent of the regulation necessary under existing conditions of transportation to conserve and promote the interests of interstate commerce. * * * Nor, in the absence of Federal action, may we deny effect to the laws of the state enacted within the field which it is entitled to occupy until its authority is limited through the exertion by Congress of its paramount constitutional power" 230 U. S., 351, 432, 433.

But, if there is any doubt that the terms of paragraph 4 cover only the use of existing terminal facilities and do not go to the acquisition of new property and the construction of new depots, it is only necessary to refer to the legislative history of the act, which shows that an amendment which would have given the Interstate Commission the very power now claimed for it by respondents, was voted down and that Chairman Esch of the Committee having the bill in charge stated that the matter was to be left within the jurisdiction of the State Commissions (Pet. 1st Br., pp. 30 to 32).

That this court will in proper cases refer to committee reports and statements of the chairman of a committee having a bill in charge, was held in the *Shreveport case*, 234 U. S., 342, 356, and also in *Akron, C. & Y. Ry. Co. v. United States*, 43 Supreme Court Reporter, 270, 274. In the latter case statements of Chairman Esch relative to the Act here being considered were cited by the court.

As already pointed out and as reference to the map clearly shows, it is not necessary, in order to carry out the Commision's order for the cariers to do more than merely rearrange their tracks. There will be no extensions, no abandonments, no joint use of tracks or "physical connections" (unless they themselves desire it), no interchange of traffic, no use by one carrier of the terminal facilities of another. It follows that the order of the Commission can be carried out without infringing in any particular upon the enlarged power of the Interstate Commission.

This being so, it is unnecessary to consider the arguments of respondents relative to the undisputed power of Congress to legislate on the subject of interstate commerce.

"It has repeatedly been declared by this court that as to those subjects which require a general system or uniformity of regulation, the power of Congress is exclusive. In other matters, admitting of diversity of treatment according to the special requirements of local conditions the states may act within their respective jurisdictions until Congress sees fit to act; and, when Congress does act, the exercise of its authority overrides all conflicting state legislation."

Cooley v. Port Wardens, 12 How. 299, 319, 13 L. ed. 996, 1004; Ex parte McNiel, 13 Wall. 236, 240, 20 L. ed. 624, 625; Welton v. Missouri, 91 U. S. 275, 280, 23 L. ed. 347, 349; Mobile County v. Kimball, 102 U. S., 691, 697, 26 L. ed. 238, 239; Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 196, 204, 29 L. ed. 158, 162, 1 Inters. Com. Rep. 382, 5 Sup. Ct. Rep. 826; Bowman v. Chicago & N. W. R. Co., 125 U. S. 465, 481, 485, 31 L. ed. 700, 705, 707, 1 Inters. Com. Rep. 823, 8 Sup. Ct. Rep. 689, 1062; Gulf, C. & S. F. R. Co. v. Hefley, 158 U. S. 103, 104, 39 L. ed. 912, 913, 15 Sup. Ct. Rep. 802; Northern P. R. Co. v. Washington, 222 U. S. 370, 378, 56 L. ed. 237, 239, 32 Sup. Ct. Rep. 160; Southern R. Co. v. Reid, 222 U. S. 424, 436, 56 L. ed. 257, 260, 32 Sup. Ct. Rep. 140."

Minnesota Rate Cases, 230 U. S., 351, 399, 400.

"Further, it is competent for a state to govern its internal commerce, to provide local improvements, to create and regulate local facilities, to adopt protective measures of a reasonable character in the interest of the health, safety, morals, and welfare of the people, although interstate commerce may incidentally or indirectly be involved."

Id., p. 402.

STATE COMMISSION'S ORDER DOES NOT SUPPLEMENT FEDERAL REQUIREMENTS.

Two other matters require some discussion. In petitioner's brief in support of the petition (p. 29) it was suggested that if it were necessary to issue securities to carry out the Commission's order, application therefor could be made by the carriers to the Interstate Commission for permission. Respondents claim that by this suggestion petitioners are proposing that the states "supplement" the requirements of the Federal statutes, and cite many cases to show that such concurrent jurisdiction is not recognized. Again we agree with respondents' argument upon the fundamental proposition. The state can no more supplement the requirements of a Federal statute, than it can annul them. But this was not what petitioners suggested.

If, in order to comply with a lawful state order, the railroads find it desirable to issue securities, or if in order to reach the proposed depot, respondents prefer to use certain trackage jointly, rather than to come in, each over its own tracks, then respondents can ask the Interstate Commission for permission to do these things. But these things are not ordered by the State Commission. The Commission's order stands alone and does not supplement any Federal requirements, or necessarily involve the exercise of any concurrent jurisdiction, but simply directs certain things to be done, all of which are exclusively in the power of the State to require and not prohibited by any provisions of the Act of 1920.

The possibility that the Interstate Commission may be called upon to grant permission to the railroads to do certain things to facilitate compliance with the State

Commission's order is not an attempt by the State Commission to supplement the requirements of a Federal statute. On the contrary, it would be calling upon the Federal body to supplement the requirements of a state commission's order and would be entirely in harmony with the spirit and meaning of the Interstate Commerce Act. Sec. 13, Par. 3.

PROVISO OF PARAGRAPH 17, SECTION 1.

There has been considerable discussion in the briefs as to the effect of the proviso at the close of paragraph 17, section 1, which in plain terms says that nothing in the Act shall impair the right of a State in the exercise of its police power to require just and reasonable freight and passenger service for intrastate business, except in so far as such requirement is inconsistent with any lawful order of the Interstate Commission made under the provisions of the Act.

We have already stated our contention that the Act does not impair the power of the State to make the order which the California Commission made. It is also clear that the Act has in no way deprived the States of their power over intrastate commerce or vested the Interstate Commission with any power of "general regulation of intrastate commerce." *Railroad Commission of Wisconsin* v. *C. B. & Q. Ry.*, 257 U. S. 563, 590. And, of course, regardless of this proviso Congress could not and has not endeavored to encroach upon the constitutional powers of the States reserved to them by the 10th Amendment to the Constitution.

The purpose of the proviso was undoubtedly to declare what was said by Congressman Esch, that the Act had not, and should not be construed as having

deprived the States of matters lying within their police power including the matter of depots. To this extent we agree with respondents that the proviso did no more than declare what is apparent from reading the Act and what is existing law regardless of the proviso.

But the proviso also says that the State's requirement shall not be impaired except when "such requirement is inconsistent with a *lawful order* of the (Interstate) Commission." (Italics ours.)

This portion of the proviso is an apparent recognition of certain well established principles.

The power of Congress to regulate interstate commerce is supreme and exclusive, but remains dormant until actually exercised. The power to regulate intrastate commerce is left exclusively in the States and in the exercise of that power the State may, so long as the Federal power remains dormant, indirectly affect interstate commerce. As soon as the Federal power is exercised, then all State regulations which conflict with it, even though intended to operate exclusively on intrastate commerce, must yield to the paramount power of the Nation.

In the case at bar, as we have shown, Congress has not vested powers in the Interstate Commission which give it authority over the matters contained in the California Commission's order. The Federal power as to these matters remains dormant. But Congress has given the Interstate Commission vastly enlarged powers. If in the exercise of these powers the Interstate Commission should make a "*lawful order*" affecting interstate commerce and that order conflicted with any requirement made by a State in the exercise of its police power to require reasonable intrastate service, such "lawful order" of the Federal Commis-

sion would be paramount to the State requirement. To quote again from the Minnesota State case:

> "Within the State power, then, in the words of Chief Justice Marshall, is 'that immense mass of legislation which embraces everything within the territory of a State, not surrendered to the general government; all which can be most advantageously exercised by the States themselves. * * * If the legislative power of the Union can reach them, it must be for national purposes; it must be where the power is expressly given for a special purpose, or is clearly incidental to some power which is expressly given.' Gibbons v. Ogden, 9 Wheat. 203, 204, 6 L. Ed. 71, 72.
>
> "And whenever, as to such matters, under these established principles, Congress may be entitled to act, by virtue of its power to secure the complete government of interstate commerce, the State power nevertheless continues until Congress does act and by its valid interposition limits the exercise of the local authority." 230 U. S. 351, 411, 412.

The order of the California Commission is made under the police power of the States to require good service for intrastate business. The fact that it may indirectly affect interstate commerce is of no consequence so long as the Interstate Commission in the exercise of its powers over interstate commerce makes no lawful order that stands in the way of the State's requirements. The Interstate Commission has made no such order in this case.

Respondents in their brief have attempted to show that the Interstate Commission has "actually taken action" by referring to the fact that the city of Los Angeles filed a petition with the Interstate Commission

invoking its powers to order the same relief that was granted by the order of the California Commission and that hearings have been had on that complaint. Respondents omitted to state that at the conclusion of this hearing Commissioner Aitchison said:

> Commissioner Aitchison: By stipulation the Commission will depart from its usual rule as to fixation of time for filing of briefs, and will give the matter consideration after the *certiorari* case of the Supreme Court has been disposed of, and the case will rest in abeyance until then. Is that satisfactory to all concerned?

To this proposal counsel for respondents agreed and the hearings adjourned.

It thus appears that instead of having "actually taken action" the Interstate Commission has expressly declined to take action and will make no "lawful order" either consistent or inconsistent with the order of the California Commission until after this court has rendered its decision in the case at bar.

In the absence of any inconsistent order by the Interstate Commission we submit that the validity of the order of the California Commission is fully preserved by the proviso of paragraph 17, section 1.

On the construction of this proviso we respectfully direct the court's attention to the case of *Chicago, R. I. & P. Co. vs State*, 217 Pac. 147. In this case the Oklahoma Supreme Court sustained an order of the Oklahoma Corporation Commission which was almost identical with the order of the California Commission here under review. A union station was ordered at a new site, grade crossings were ordered eliminated and the carriers were ordered to file plans and specifications. All the objections that are being made here

were presented to the Oklahoma court and the court held in no uncertain terms that the Act of 1920, had not taken away the state's power to make such an order. It was held that the proviso of paragraph 17, section 1, covered depot facilities and fully preserved the state's power over them.

As to the contention which is made so insistently here that the order placed an unlawful burden on interstate commerce, the court said:

> "The question of whether the construction of this depot will place an unusual burden on the company, so as to cripple its operation upon interstate or foreign commerce, cannot be determined until after plans and specifications are made and approved and the distribution of the costs made."

The situation is identical with that presented by the case at bar. Plans have not yet been filed by the carriers as required by the California Commission's order and it is impossible for any one to say whether the cost of complying with that order will place an unusual burden upon the carriers.

Finally, we desire to point out that the absence of any "lawful order" of the Interstate Commission which is inconsistent with the requirements of the State's order is one of the important points which distinguish this case from the *Wisconsin Rate Case* and the *Shreveport Case*.

In the *Wisconsin Rate Case* "The Interstate Commission *had found* there was an undue, unreasonable, and unjust discrimination in Wisconsin against interstate passengers and against interstae commerce as a whole." The same condition existed in the *Shreveport Case*. In both cases the rates fixed by the State

had been found by the Federal Commission to constitute an unlawful burden on interstate commerce.

No such condition exists here. The Interstate Commission has made no such finding. The case, therefore, falls within the rule of the *Minnesota Rate Cases*, i.e., that the order of the State is valid in the absence of contrary action by the Federal power. This rule was reaffirmed by this Court in the Shreveport case in the following terms:

> "Undoubtedly—in the absence of a finding by the Commission of unjust discrimination—intrastate rates were left to be fixed by the carrier, and subject to the authority of the States, or of the agencies created by the States. This was the question recently decided by this court in the Minnesota Rate Cases."

Quoting from the latter case this Court said:

> "* * * The question whether the carrier, in such a case, was giving an undue or unreasonable preference or advantage to one locality as against another, or subjecting any locality to an undue or unreasonable prejudice or disadvantage, would be primarily for the investigation and determination of the Interstate Commerce Commission, and not for the courts." 234 U. S. 341, 357, 358.

We respectfully submit that the decision of the California Supreme Court annulling the order of the California Railroad Commission was erroneous and should be reversed.

Respectfully submitted,

HUGH GORDON,
WILLIAM W. CLARY,
Attorneys for Petitioners.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA *v.* SOUTHERN PACIFIC COMPANY ET AL.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA *v.* LOS ANGELES & SALT LAKE RAILROAD COMPANY.

CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

Nos. 283–285. Argued November 22, 1923.—Decided April 7, 1924.

1. In view of the policy and provisions of the Transportation Act, establishment of a new union station for several interstate carriers, involving the abandonment of their separate stations, extensive changes and relocations of their main tracks and very great expense, cannot be brought about by voluntary action of the carriers or order of a state commission in the absence of a certificate of the Interstate Commerce Commission, under pars. 18–21 of § 402 of the act. P. 342.
2. The provisions of the Transportation Act, § 402, pars. 18–21, that no interstate carrier shall extend its line of railroad unless and until the Interstate Commerce Commission shall certify that public convenience requires it, and forbidding the Commission to authorize such extension unless it finds it reasonably required in the interest of public convenience or necessity or that the ex-

pense will not impair the carrier's ability to perform its duty to the public,—*construed*, as not confined to extensions with a purpose to include new territory to be served by a carrier, but as including proposed extensions of main tracks within a city to a proposed new union station, involving changes in the intramural destinations of carriers and in the handling of interstate traffic, and necessitating great expense. P. 344.

190 Cal. 214, affirmed.

CERTIORARI to a judgment of the Supreme Court of California, annulling, upon review, an order of the State Railroad Commission which sought to require the above-named railroads to eliminate certain grade crossings and establish a new union terminal depot, in the City of Los Angeles.

Mr. William W. Clary and *Mr. Hugh Gordon* for petitioner.

The amendments of 1920 to the Commerce Act vest no power in the Interstate Commerce Commission relative to new union passenger depots.

Section 15a is referred to by the court below only as showing generally the greatly enlarged powers of the Commission and its affirmative duty to maintain an adequate railway service for the people of the United States. Section 5, pars. 4 and 5, relate to the general plan for the consolidation of railway properties of the United States into a limited number of systems. They are quoted in the decision as being expressive of the enlarged scope and purposes of the act. Section 1, pars. 3 and 10, are referred to to show the definitions of the terms "railroad" and "car service." None of these sections makes any reference to depots or terminal facilities.

Section 1, par. 1, gives the Commission power, when an emergency exists, (a) to suspend established rules, (b) to make directions relative to car service, (c) to require joint use of terminals, including main line tracks for a reasonable distance outside of such terminals. This

language does not authorize the Commission to require the erection of a new union depot for permanent use, but refers to the joint use during emergencies of existing terminals.

Section 1, par. 18, refers to the construction, extension and abandonment of railroad lines and provides for the issuance of certificates of public convenience and necessity therefor.

The State Commission ordered neither the construction nor the abandonment of a "line of railroad." True, the erection of a new union depot and the elimination of grade crossings will require a rearrangement of traffic. Some new track may have to be laid and some old track abandoned. The amount of new track necessary is very small.

The Interstate Commission has held that such relocations of trackage not affecting the service to the public, do not constitute either the construction or abandonment of "lines of railroad" within par. 18, § 1 of the Commerce Act. *Matter of Philadelphia, Newtown & N. Y. R. R. Co.*, 67 I. C. C. 252; *Matter of Pearl Valley R. R. Co.*, 67 I. C. C. 748. This is borne out by *Texas* v. *Eastern Texas R. R. Co.*, 258 U. S. 204.

Here, the carriers will not abandon or cease operating their roads or any part of them. They will merely shift their lines in such a way as to carry on the same operations they do now, but with more safety and convenience to the public.

Paragraph 21 of § 1 authorizes the Commission to require any carrier to provide adequate facilities for performing "its car service as that term is defined in the Act" and to extend its line or lines. The term "car service" is defined in par. 10 of § 1 and has to do with the supply, distribution and exchange of cars and locomotives. The clause as to extension of lines is similar to that found in par. 18 of § 1, except that par. 18 applies to cases where

permission to extend is sought by the carrier and par. 21 to cases where the carrier is ordered to extend by the Commission upon its own initiative or upon complaint. In neither case is a mere rearrangement of existing trackage an extension of a " line of railroad " within the meaning of these provisions. Paragraph 22 exempts from the authority of the Commission, conferred by pars. 18 to 21, inclusive, all construction or abandonment of spurs, industrial tracks, etc., located wholly within one State.

Paragraph 3 of § 3 refers to the interchange of traffic between different carriers, and has no bearing on the issue before the Court. Paragraph 4 of § 3 refers to existing terminal facilities. It is not inconsistent with § 36 of the California Public Utilities Act. Paragraph 4 refers to a " carrier owning or entitled to the enjoyment of terminal facilities." It provides for the use of the " terminal facilities including main line track for a reasonable distance outside such terminal " of one carrier by another carrier. It provides that " the carrier whose terminal facilities are required to be so used " may recover compensation. These expressions plainly mean existing terminal facilities.

It may be claimed that the order cannot be obeyed without a joint use of certain existing facilities such as main line tracks; and that the order is for that reason repugnant to the provisions of par. 4. The State Commission did not order the railroad companies to carry out any of the proposed plans. It simply ordered them to construct a depot somewhere within a large area according to plans which they themselves were to prepare. To say that no possible plan for a union depot can be devised which does not require a joint use of tracks is merely to speculate in advance of any attempt to prepare final plans.

Paragraph 20 of § 1 prohibits the railroads from making any constructions or abandonments of lines of railroad without the consent of the Interstate Commerce Commis-

sion. The prohibitions of the paragraph refer expressly to pars. 18 and 19 of § 1. They do not refer to existing terminal facilities, which are covered by § 3, par. 4. The state court erroneously construed par. 20 to apply to " the extension of railroad facilities and the abandonment of other railroad facilities, including terminals."

As already shown, the order required no construction or extension of new lines or abandonment of old lines within the meaning of the act as construed by the Interstate Commerce Commission. Nor did it require any joint use of facilities. The prohibitions of § 20 therefore did not terminate the power of the State Commission to make the order.

The fact that many kinds of regulations are specifically provided for in the act, as, for instance, interchange of traffic, switch connections, car service, securities, extensions into new territory, consolidation of lines, etc., while the act is silent as to any regulation concerning new union depots, indicates that the latter are not covered by the act.

If, after plans are prepared for a union depot in compliance with the State Commission's order, it should be deemed advisable to invoke the jurisdiction of the Interstate Commerce Commission in connection with any part of the work, such as a joint use of tracks, or for the issuance of securities, application may be made to the Interstate Commerce Commission at that time. The present validity of the order is not affected by this possibility. Under well settled law, an order of the Railroad Commission is not invalid merely because it cannot be carried out until some other public authority takes additional or concurrent action. *Motor Transit Co.* v. *Railroad Comm.*, 189 Cal. 573; *Oro Elec. Co.* v. *Railroad Comm.*, 169 Cal. 466; *Turner Co.* v. *Chicago, etc., Ry. Co.*, 36 S. Dak. 310.

The legislative history of the act clearly indicates an intention that jurisdiction over union passenger depots

should not be taken away from the States. See Cong. Rec., Nov. 15, 1919, pp. 9067–9071.

If the amendments of 1920 should be construed to cover the subject of union depots, nevertheless the State's power remains unimpaired and the State Commission's order is valid unless the Interstate Commerce Commission makes an inconsistent order.

The proviso of par. 17, § 1, in plain terms preserves the police power of the State to require just and reasonable freight and passenger service for intrastate business. The fact that a carrier may also be engaged largely in interstate business does not deprive the State of this reserved power unless the State makes a requirement that is "inconsistent with any lawful order of the Commission [interstate] made under the provisions of this act."

The proviso in par. 17 is in effect a congressional enactment of the principle announced in *Missouri Pac. Ry. Co.* v. *Larabee Flour Mills Co.*, 211 U. S. 612, viz., that even when Congress has entered a particular field of interstate commerce and has authorized the Interstate Commerce Commission to exercise jurisdiction therein, nevertheless, unless the matter is one to be handled by general rule or regulation, the States may continue to act as to particular situations unless and until the Interstate Commerce Commission takes action as to such particular situations.

The power of Congress to regulate interstate commerce, although supreme and exclusive, remains dormant until actually exercised. The mere enactment of laws by Congress does not arouse this dormant power unless those laws are of such nature as to exclude any action by the States.

New York Central R. R. Co. v. *Public Service Comm.*, 233 N. Y. 113, is not in point, because § 3, par. 3 of the Commerce Act, as amended, specifically provides for the interchange of traffic, and the New York court held that the New York law did not authorize the state commission to make such a requirement.

The State Commission's finding that public convenience and necessity require the operation of a union depot was consistent with, and supported by, the evidence.

The Commission's findings on questions of public convenience and necessity were final and conclusive under the California law.

The Commission under the police power of the State has authority to order the railroads to erect a union depot as an essential measure for the elimination of dangerous grade crossings. *Erie R. R. Co.* v. *Board of Public Utility Commrs.*, 254 U. S. 394.

The order, in requiring the construction and use of the new union depot and the abandonment of the present facilities, does not deprive railroads of property in violation of the guarantees of the Federal Constitution.

The Commission's requirement that the operation of trains on Alameda Street be eliminated after the construction of the union depot does not impair the obligation of a contract contained in a franchise permitting the railroads to operate trains on Alameda Street.

The Commission's order is not invalid because it may require the railroads to expend large sums of money and to exercise power of eminent domain in acquiring the necessary land and constructing a union depot.

Mr. C. W. Durbrow, with whom *Mr. Wm. F. Herrin*, *Mr. Frank C. Cleary*, *Mr. J. P. Blair*, *Mr. F. H. Wood*, *Mr. Wm. R. Harr*, *Mr. E. W. Camp*, *Mr. M. W. Reed*, *Mr. Gardiner Lathrop*, *Mr. A. S. Halsted* and *Mr. Fred E. Pettit, Jr.*, were on the briefs, for respondents.

Mr. John E. Benton and *Mr. Paul A. Walker*, by leave of Court, filed a brief as *amici curiae*, on behalf of the National Association of Railway and Utilities Commissioners and of the regulatory commissions of twenty-nine States.

MR. CHIEF JUSTICE TAFT delivered the opinion of the Court.

The question in this case is whether the State Railroad Commission of California has power to require the Southern Pacific Company, the Atchison, Topeka & Santa Fe Railway Company and the Salt Lake & Los Angeles Railroad Company to build an interstate union depot in the city of Los Angeles.

The proceedings were begun in 1916 before the Railroad Commission by complaints of Civic Associations and others against the Railway Companies. Before the hearing and the decision were had, the Transportation Act of Congress of 1920 was enacted. In December, 1921, after two hearings, an amended order against the Railways was made by which they were required to remove certain grade crossings and to build a union terminal within a certain defined area in the city.

The Railway Companies sought review of this order in the Supreme Court of the State, and their three writs were heard and disposed of as one case. The Supreme Court of the State held that the order was beyond the power of the State Railroad Commission, because the subject matter was committed to the Interstate Commerce Commission by the Transportation Act of 1920. The court further held that if the order had effected the elimination of grade crossings alone, it would have been valid, but that, associated as it was with the establishment of the Union Station, it must be annulled. We have brought the case of the Commission against each of the railways here by certiorari.

Lines of the three railways approach Los Angeles from the north and come together in the city near the North Broadway viaduct as it crosses the Los Angeles River. Thence the Salt Lake and Santa Fe lines follow the bed of the Los Angeles River, one on its east and the other on its west bank. The Salt Lake passenger station is at 1st

Street. Its main line from Pasadena and Glendale comes from the north, but its line from Salt Lake comes in from the south. From north to south in Los Angeles, its line hugs the east bank of the river for three miles. The Santa Fe Station is opposite that of the Salt Lake Railway on the west bank. The Santa Fe hugs the west bank for three miles in the city. One of its lines leaves Los Angeles by the north for Chicago. Another leaves the city by the south through Riverside for Chicago. The Southern Pacific does not follow the river bed after passing under the Broadway viaduct but extends in a southwesterly direction until it reaches the north end of Alameda Street. From that point it runs south through the city at grade on that street. Its station is at 5th Street and lies southwesterly from the Salt Lake and Santa Fe stations and a quarter of a mile distant from them. The eastern main line of the Southern Pacific crosses the river at Alhambra Avenue, joins the San Francisco main line and reaches the station from there by the same tracks on Alameda Street. The Southern Pacific occupies Alameda Street on grade and longitudinally in both directions from its station for three miles. Its lines toward the South go to San Pedro and Santa Anna.

The order of the Railroad Commission requires the abandonment of the passenger stations of the three railways. The Southern Pacific Station is a comparatively modern depot and would be adequate for many years. Those of the other two companies are not adequate, but they have ample ground upon which to construct suitable stations. The order required the removal from Alameda Street of the main line of the Southern Pacific for three miles, permitting the use of its tracks in that street for switching during a few hours at night. The order also required that by viaducts over the river and over the Salt Lake & Santa Fe tracks on the river banks, grade crossings should be eliminated. The order further required

that the three railways should purchase jointly land enough in an area reaching from Alameda Street to the river and from Aliso Street to Alhambra Street to erect a suitable Union Station, to be situated somewhere near a square called the Plaza. The railways are directed to make such additions to, extensions of, improvements and changes in the existing railroad facilities of said companies as may be reasonably necessary and incidental to the use of said Union Passenger Station. This would require the removal of the present station of the Southern Pacific from 5th Street toward the Plaza, at least half a mile, and the stations of the Santa Fe and the Salt Lake from 1st Street on the river to the Plaza more than a quarter of a mile. The changes to be effected under the order will require, in the abandonment of the Southern Pacific main track on Alameda Street for three miles, a joint use by the Southern Pacific of main tracks on the river bank with either the Salt Lake or the Santa Fe, or the construction of its own main tracks on one side or the other along the river bank. The main tracks of the Salt Lake must be extended across the Los Angeles River on a viaduct to the area selected for the Union Station. The main track of the Santa Fe runs along the river side of the selected area but an extension of its main tracks will have to be made to bring it into the new station.

The order requires the joint use of land, tracks and terminal facilities valued at $28,050,691; the abandonment of three existing passenger stations of the railways as such, and the ultimate capital expenditure for all recommendations of from $25,000,000 to $45,000,000.

The Railroad Commission in the Supreme Court of the State pressed the argument that, in view of its finding that the Union Station was an indispensable element in getting rid of the grade crossings, it had the incidental right to order its building. The court rejected the argument. It said:

"That notwithstanding the views expressed by the Railroad Commission in its findings and conclusions in the proceeding herein presented for review, we can perceive no indispensable relation between the elimination of grade crossings and the establishment of union depot facilities, nor can we see an unsurmountable difficulty why jurisdiction over the matter of eliminating grade crossings may not be exercised in a proper case consistently, and it may be concurrently, with the exercise of the authority which is vested by the Act of Congress of 1920 in the Interstate Commerce Commission over the subject of union terminal depot facilities."

The State Supreme Court thus modifies the findings of the Railroad Commission in so far as they sought to tie the validity of its order establishing a union station to its unquestioned police power to regulate grade crossings in the interest of the public safety. We avoid any inquiry how far, if at all, the principle laid down in *Erie R. R.* v. *Board of Public Utility Commrs.*, 254 U. S. 394, is qualified by the provisions of the Transportation Act. Our only question here is whether the power to direct a new union station with its essential incidents is committed exclusively to the Interstate Commerce Commission under the Act of 1920.

In *Dayton-Goose Creek Ry. Co.* v. *United States*, 263 U. S. 456, 478, this Court said of the Transportation Act:

"The new act seeks affirmatively to build up a system of railways prepared to handle promptly all the interstate traffic of the country. It aims to give the owners of the railways an opportunity to earn enough to maintain their properties and equipment in such a state of efficiency that they can carry well this burden. To achieve this great purpose, it puts the railroad systems of the country more completely than ever under the fostering guardianship and control of the [Interstate Commerce] Commission, which is to supervise their issue of

securities, their car supply and distribution, their joint use of terminals, their construction of new lines, their abandonment of old lines, and by a proper division of joint rates, and by fixing adequate rates for interstate commerce, and in case of discrimination, for intrastate commerce, to secure a fair return upon the properties of the carriers engaged." *New England Divisions Case*, 261 U. S. 184; *Railroad Commission* v. *Chicago, Burlington & Quincy R. R. Co.*, 257 U. S. 563.

On the one hand, it is urged that, with the purposes thus declared, the act commits to the supervision and control of the Interstate Commerce Commission such an undertaking as is here in question involving a new capital investment of from twenty-five to forty-five millions of dollars in the terminals of three great interstate railway systems in the largest city of our Western Coast. On the other hand, it is earnestly contended that, since no specific provision is made for the supervision of interstate union stations, by the Interstate Commerce Commission, the whole subject remains in the control of the state Railroad Commissions. We must examine the sections of the act in some detail to determine the force of these counter contentions.

The term railroad is defined in the act, par. 3, § 400, to include all switches, spurs, tracks, terminals and terminal facilities of every kind used or necessary in the transportation of persons or property, including freight depots, yards and grounds used therein. Section 402, after defining the term "car service" under the act as including use, control, distribution, and exchange of locomotives, cars and other vehicles used in interstate transportation, provides for just regulation of it by the Commission, and gives that body power, in case of shortage of equipment or other emergency, to suspend the regulations, to give just directions, without regard to ownership, to promote the service and to adjust proper compensation

for its use, and "to require such joint or common use of terminals, including main-line track or tracks for a reasonable distance outside of such terminals," as in the opinion of the Commission will meet the emergency and the public interest, and upon hearing determine just compensation for use of same. Paragraph 16 authorizes the Commission to provide transportation by other carriers if one carrier is unable to handle its traffic upon terms fixed by the Commission.

By § 405, amended § 3 of the Interstate Commerce Act provides in its third paragraph that all carriers shall afford all reasonable facilities for the interchange of traffic between their respective lines and for forwarding and delivering passengers. Paragraph 4 provides that the Commission may in the public interest and without impairment of a carrier's power to handle its own business with its terminal facilities, require the use of its terminal facilities, including its main-line track or tracks for a reasonable distance outside of its terminal—for another carrier or carriers, upon such terms as may be agreed upon by the parties, fixed by the Commission or determined by suit as in condemnation proceedings.

It is obvious from the foregoing that Congress intended to place under the superintending and fostering direction of the Interstate Commerce Commission all increased facilities in the matter of distribution of cars and equipment and in joint terminals, in the exchange of interstate traffic and passengers between railways so as to make it prompt and continuous. It not only provides for the temporary expropriation of terminals and main track of one railway to the common use of one or more other railways in an emergency, but it also contemplates the compulsory sharing of one company's terminals with one or more companies as a permanent arrangement. This is a drastic limitation of a carrier's control and use of its own property in order to secure convenience and dispatch

for the whole shipping and travelling public in interstate commerce. It gives to the Interstate Commerce Commission the power and duty, where the public interest requires, to make out of what is the passenger and freight station of one interstate carrier, a union station or depot.

But it is insisted that the supervisory power thus conferred does not include the installation of an interstate union station, where its terminals and main tracks are newly built, and the interstate carriers are compelled to expropriate, not the terminal property of another interstate carrier, but property of others than carriers not theretofore used for terminals. This would be giving power to the Interstate Commerce Commission to provide for a small and contracted union station of interstate carriers limited to the terminals of one carrier, and would leave the larger and more important union stations of interstate carriers to the control of state commissions. We think, however, that means of control over installation of such new union stations for interstate carriers is given to the Interstate Commerce Commission in amended paragraphs (18 to 21) of § 402. They provide that no interstate carrier shall undertake the extension of its line of railroad or the construction of a new line of railroad, or shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation over such additional or extended line of railroad, unless and until the Commission shall certify that public convenience present or future requires it, and that no carrier shall abandon all or any portion of its line or the operation of it without a similar certificate of approval. Such a certificate is, we think, necessary in the construction of a new interstate union station which involves a substantial and expensive extension of the main tracks or lines of interstate carriers who theretofore have maintained separate terminals.

It is argued that paragraphs 18 to 21, of § 402, refer only to extensions of a line of railroad having the

purpose to include new territory to be served by the interstate carrier and do not refer to an extension of new main track for the mere purpose of rearranging terminals within the same city. We do not think the language of paragraphs 18 to 21 can be properly so limited. We are confirmed in this by paragraph number twenty-two which immediately follows:

"The authority of the Commission conferred by paragraphs (18) to (21), both inclusive, shall not extend to the construction or abandonment of spur, industrial, team, switching or side tracks, located or to be located wholly within one State, or of street, suburban, or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation."

This is a palpable distinction between the main tracks of an interstate carrier, and its spur, industrial, switching or side tracks, and shows the legislative intention to retain any substantial change in the main tracks within the control of the Interstate Commerce Commission. It may well be that a mere relocation of a main track of an interstate carrier which does not involve a real addition to, or abandonment of, main tracks and terminals, or a substantial change in destination, does not come within the paragraphs 18 to 21. One might, too, readily conceive of railroad crossings or connections of interstate carriers in which the exercise by a state commission of the power to direct the construction of merely local union stations or terminals without extensions of main tracks and substantial capital outlay should be regarded as an ordinary exercise of the police power of the State for the public convenience and would not trench upon the power and supervision of the Interstate Commerce Commission in securing proper regulation of an interchange of interstate traffic or passengers. Only a lawful order of the Interstate Commerce Commission would raise a question of the power of

a state commission in such cases, as the proviso of paragraph 17, § 402 of the Transportation Act shows:

"That nothing in this Act shall impair or affect the right of a State, in the exercise of its police power, to require just and reasonable freight and passenger service for intrastate business, except in so far as such requirement is inconsistent with any lawful order of the Commission made under the provisions of this Act."

But there is a great difference between such relocation of tracks or local union stations and what is proposed here. The differences are more than that of mere degree; they and their consequences are so marked as to constitute a change in kind. They come within paragraphs 18 to 21 of § 402 and require a certificate of the Interstate Commerce Commission as a condition precedent to the validity of any action by the carriers or of any order by the State Commission.

The proviso of paragraph 21 of § 402 is significant of the distinction we are pointing out. It forbids the Commission to authorize or order the extension of its lines "unless the Commission finds, as to such extension, that it is reasonably required in the interest of public convenience and necessity, or as to such extension . . . that the expense involved therein will not impair the ability of the carrier to perform its duty to the public."

The extensions of the lines and main tracks of these railways under the plan which the State Commission has ordered are not great in distance, but they involve a new intramural destination for each railway with important changes in the handling of interstate traffic and passengers. Great expense attends such changes of the main tracks in a crowded city, and they here carry with them as necessarily incident thereto, the abandonment of available sites and of valuable existing passenger and freight stations and the construction of a new union station elsewhere, imposing on the three railways a cost in making

the changes of from twenty-five millions to forty-five millions of dollars. We think it clear that in such an extension of main lines with their terminals the Interstate Commerce Commission is required by the act to make a finding that the expense involved will not impair the ability of the carriers concerned to perform their duty to the public.

The purpose of Congress to prevent interstate carriers from incurring expense which will lessen their ability to perform well their interstate functions is further shown in § 439 of the Transportation Act, whereby the Interstate Commerce Act is amended by insertion of § 20a. This new section subjects to the approval or rejection of the Interstate Commerce Commission the issue by an interstate carrier of all future shares of stock, bonds or other evidence of indebtedness and forbids approval unless the Commission shall find that their issue is for a lawful purpose, is compatible with the public interest, is appropriate and necessary to the discharge of its public duty as a common carrier and will not impair its ability to perform that service. This is of course *in pari materia* with the restriction of paragraph 21 of § 402 to prevent a possible impairment of the financial ability of interstate carriers to discharge their interstate commerce duties. Such a heavy burden as that involved in this new union station and the main track changes and extensions and other accessories would in all probability require the three railways to issue new capital securities and this could not be done without the approval of the Interstate Commerce Commission. To be sure this provision only becomes operative when securities have to be issued and would not, of itself, prevent action by a state commission until such securities are seen to be necessary; but the provision indicates the general congressional plan.

We were advised by statements at the bar that, after the California Supreme Court handed down its decision in this case, the City of Los Angeles filed a petition with

the Interstate Commerce Commission asking for an order to provide, maintain and use a union station; that a hearing followed and that, pending the decision in this Court, the matter is held under consideration.

For the reasons given, we think the course taken by the City of Los Angeles was the correct one. Until the Interstate Commerce Commission shall have acted under paragraphs 18 to 21 of § 402 of the Transportation Act, the respondent railways can not be required to provide a new interstate union station and to extend their main tracks thereto as ordered by the State Railroad Commission.

The judgment of the Supreme Court of California is

Affirmed.